1936
20th Session
II

REPORT II

International Labour Conference

TWENTIETH SESSION

GENEVA, 1936

HOLIDAYS WITH PAY

Second Item on the Agenda

GENEVA
International Labour Office

1936

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GENEVA, SWITZERLAND

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INTRODUCTION

At its Sixty-fourth Session, in October 1933, the Governing Body of the International Labour Office decided to place the question of holidays with pay on the agenda of the Nineteenth Session of the International Labour Conference, and the question accordingly come before that Session for first discussion in accordance with the Standing Orders of the Conference. The Nineteenth Session had before it a preliminary report (Grey Report) prepared by the Office containing a statement of the law and practice in the various countries in the matter of holidays with pay, and setting forth, in conclusion, the points on which the Governments might be consulted with a view to the second stage of the double discussion procedure. After examination of the Grey Report, the Conference decided to place the question of holidays with pay on the agenda of its Twentieth (1936) Session and settled the basis of the consultation of Governments in preparation for the second discussion and final decision to be taken at that Session. A Questionnaire was accordingly drawn up by the Office and circulated to the Governments of the States Members on 23 July 1935.

The present Report has been prepared on the basis of the replies of Governments to the Questionnaire. Chapter I reproduces the replies received; Chapter II gives a comparative analysis of these replies, and Chapter III sets out the conclusions drawn from the analysis contained in Chapter II and gives the text of the proposals which the Office, on the basis of these conclusions, submits to the Conference with a view to the second discussion of the question.

Although the Office, in order to enable it to prepare and despatch the present Report within the desired time, requested Governments to furnish their replies to the Questionnaire by 1 December 1935 at the latest, the majority of the replies was received a considerable time after that date.

By 20 February 1936, the date on which this Report was closed for the purpose of including replies to the Questionnaire, the Office had received replies from the Governments of the following twenty-eight States: Austria, Belgium, Brazil, Bulgaria, Chile, China, Cuba, Denmark, Estonia, Finland, Great Britain, Hungary, India, 'Iraq, Irish Free State, Italy, Japan, Luxemburg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Union of South Africa, United States of America, Yugoslavia.

Should any further replies be received by the Office in the course of the next few weeks, they will appear in a supplementary report.

Geneva, *February 1936.*

CHAPTER I

REPLIES OF THE GOVERNMENTS

The Governments of the following countries did not reply in detail to the Questionnaire: Bulgaria, Great Britain, the Irish Free State and Japan. The general statements made by these Governments are reproduced below.

Bulgaria

The Government is of opinion that the Conference should confine itself to the adoption of a Recommendation.

Great Britain

The Government are of opinion that holidays with pay should be provided wherever circumstances permit. They feel, however, that apart from other difficulties attendant upon an attempt to deal with this matter by means of international regulations the consideration which has so far been given to the problem has not taken into account the great problem presented by the large proportion of workpeople who during the year work for different employers or who are not continuously employed. It does not appear, therefore, that it would be possible to adopt international regulations in the form of a Draft Convention. The Government, however, would be prepared to support the adoption of a Recommendation which would have the object of encouraging all practicable steps to be taken to extend the provision of holidays with pay and of stimulating further consideration of this subject.

Irish Free State

The Government is in agreement with the proposal for the adoption of international regulations in the form of a Draft Convention concerning holidays with pay.

Copies of the Conditions of Employment Bill 1935 are attached and attention is invited to sections 24, 25, 26 and 27 dealing respectively with the right of the worker to annual leave, remuneration during annual leave, time of annual leave and notice of time of annual leave. These provisions will be applicable to workers engaged in "industrial work" as defined in section 3 of the Bill. Provision for enforcement is contained in section 60 of the Bill.

As the Bill has not yet passed its final stages, the Government is of opinion that no useful purpose would be served by answering in detail the questions set out in the Questionnaire.

The following is a brief summary, made by the Office, of the more important provisions of the relevant sections of the Bill referred to by the Government of the Irish Free State.

Scope. — The provisions of the Bill apply in respect of any person, other than an outworker, who does industrial work for a salary or wages or for the purpose of learning any trade or calling. Industrial work is defined to exclude agricultural, commercial and domestic work, mining and the transport of persons or goods; but the killing of animals or birds, quarrying (irrespective of the depth of the quarry), the extraction of stone, slate or sand (otherwise than for the purpose of a mine), and the cleaning of any place where industrial work is carried on are included. Commercial work, which is excluded, includes work of a clerical nature and the overseeing, directing and managing of industrial work, while domestic work, which is also excluded, includes the preparation of food in a hotel or restaurant. Provision is made for the competent Minister to exempt employers from the provisions of the Act where the amount of industrial work carried on is so small that the provisions cannot conveniently be applied. The Act applies to persons in State employment other than members of the Police and Defence Forces.

Qualifying Period. — The period of service giving the right to a holiday is continuous employment by an employer to the extent of not less than 1,800 hours. Interruption of employment by reason of illness, the temporary cessation or temporary reduction of the weekly quantity of the work on which a worker is employed, or any other temporary cause not due to the act or default of the worker is deemed not to break the continuity of employment provided that the worker immediately returns to employment with the same employer, that he is not employed in industrial work during the interruption, and that the interruption does not exceed one month in duration.

Duration. — The duration of the holiday is fixed at six consecutive days; Sundays and public holidays are not reckoned as part of the holiday, but do not interrupt its continuity. Provision is made for the grant to a worker whose employment ceases before the end of the employment year of either the full holiday for a year or of pay equivalent to the holiday which would have been due in proportion to the period worked.

Time of Holiday. — The time at which the holiday is to be taken is to be selected by the employer, who is required to give at least one week's notice to the worker. If leave due has not been allowed up to within six working days of the end of the employment year, the worker is entitled to absent himself without breach of his contract and to receive pay for the six days.

Pay. — The employer is required to pay in respect of each day of the holiday salary or wages at the rate of remuneration payable immediately before the holiday in the case of workers paid wholly on a time basis, or at the average daily rate of earnings (exclusive of overtime earnings) in the period in respect of which the holiday is allowed in the case of workers paid wholly or partly on a piece-work basis.

Enforcement. — Inspection is entrusted to the factory inspectors.
Penalties by way of fine are imposed for offences against the Act.
The competent Minister is empowered to require employers to keep records and furnish statistical returns.

JAPAN

The system of paid holidays, such as is proposed by the Office, is rarely applied in Japan, and it is therefore difficult to introduce any general rules dealing with the matter.

The Government is, consequently, unable to give a favourable reply to this Questionnaire, which is framed with a view to the compulsory establishment of this system in accordance with international regulations.

* * *

The observations made by the Governments replying in detail to the Questionnaire are given below, sub-divided according to the various points raised in the Questionnaire and arranged in the alphabetical order of the countries.

FORM OF THE INTERNATIONAL REGULATIONS

1. Do you consider that the International Labour Conference should adopt, in the form of a Draft Convention, international regulations concerning holidays with pay ?

2. Do you consider that, failing a Draft Convention, the Conference should adopt a Recommendation ?

3. (i) If you are in favour of regulations in the form of a Draft Convention, do you consider that the Convention :

(*a*) should be limited to laying down the principle ; or

(*b*) should include detailed provisions ?

(ii) If the reply is in the affirmative to (*a*), do you consider that it would be desirable to complete the Draft Convention laying down the principle by the adoption of a Recommendation giving detailed provisions as to its application ?

AUSTRIA

Preliminary observations — In Austria the right of manual workers and salaried employees to annual holidays with pay is guaranteed to the fullest possible extent by legislation. The Act respecting leave for workers, of 30 July 1919, accords to workers employed in industry, mining, trade and commerce, as well as to those employed in railway and steamship undertakings, theatres and places of public amusement, an annual holiday with pay of one week upon completion of one year's uninterrupted service, and of two weeks upon completion of five years' uninterrupted service. Holidays for persons employed in work of a commercial character or in superior posts in work not of a commercial character or in office work (private employees) are governed by the Federal Act of 11 May 1921 (BGBl. No. 292) respecting the contract of service of private employees. Here also the length of the annual holiday varies in accordance with the length of service with one and the same employer. The length of the holiday granted is two weeks after a period of uninterrupted service of six months, this

being increased to three weeks after five years' service, to four weeks after ten years' service and to five weeks after twenty-five years' service.

Journalists (editorial staff and reporters) are entitled to more extensive rights in this respect than private employees; their holidays are governed by a special provision of the Journalists' Act of 11 February 1920 (StGB. No. 88) according to which the length of the annual leave is to be not less than one month, and after more than ten years' service one and a half months.

For theatrical artists (persons who undertake to render artistic service to a theatrical employer in one or more branches of art, especially as actors, stage managers, dramatists, conductors, musicians, in connection with the production of stage performances) the right to a holiday is governed by the Act relating to theatrical performers, dated 13 July 1922 (BGBl. No. 441). In accordance with this Act members are entitled to an uninterrupted holiday of four weeks if the contract has been concluded for more than one year or if the service has lasted for at least that length of time, and, in cases of longer service, two additional days for each additional year of service up to a maximum of six weeks. If the contract has been concluded for at least six months, or if the service has lasted for at least that time, the member is entitled to a holiday the length of which is calculated in proportion to the length of holiday granted for service of one year.

In accordance with the Domestic Servants' Act of 26 February 1920 (StGBl. No. 101), domestic servants are entitled to an annual holiday of one week if they have accomplished a period of uninterrupted service of one year, of two weeks if the uninterrupted service has lasted two years, and of three weeks if it has lasted five years.

The same length of holiday as is laid down in the Act respecting leave for workers is granted to hall-porters in private houses (caretakers, porters, watchmen) in accordance with the Act of 13 December 1922 (BGBl. No. 878, Act relating to caretakers) and to drivers of private motor-cars in accordance with the Act relating to the employment of private motor-car drivers of 20 December 1928 (BGBl. No. 359).

These legislative measures are based on the principle that the employed person's right to remuneration is continued during the holiday.

The Government replies to the Questionnaire in detail, as follows:

1 and 2. As the granting of holidays with pay constitutes a charge on industry, the international regulations in question should be in the form of a Draft Convention in order to avoid any disturbance of the competitive relations between the individual States Members and to secure as much uniformity as possible in the national laws of these members.

3. (i) For the reasons given in the reply to Questions 1 and 2 the Convention should not be limited to laying down the principle (*a*); it should rather include detailed provisions (*b*).

BELGIUM

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. (i) (*a*) The reply is in the negative.
(*b*) The reply is in the affirmative.

BRAZIL

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. (i) (*a*) A regulation laying down the principle would not solve the problem.
(*b*) It would be desirable to have detailed provisions.

CHILE

1. The reply is in the affirmative.

2. Yes, but only in the event of failure to secure a Draft Convention, or as a complement to a Draft Convention which is adopted.

3. (i) (*a*) and (*b*) Detailed provisions should be included, though certain specific questions should be reserved for the Recommendation.

CHINA

1. The reply is in the affirmative.

2. (No reply is given.)

3. (i) The Government considers that the Convention should be limited to laying down the principle.
(ii) It would be desirable to give detailed provisions in a supplementary Recommendation.

CUBA

1. A Draft Convention should be adopted.

2. The Government is not in favour of a Recommendation except in the event of a failure to secure a Draft Convention.

3. (i) and (ii) The Draft Convention should stipulate the duration of the holiday, the length of service necessary to acquire the right to a holiday and the beneficiaries of the holiday ; it should stipulate payment of wages in advance, fix the period of the holiday, prescribe the conditions upon which the right to a holiday would be lost, define what is meant by " uninterrupted service ", etc. The regulations should, therefore, contain detailed provisions on these various points.

DENMARK

1 and 2. The replies are in the affirmative.

3. The Convention should lay down the principle of holidays with pay.

ESTONIA

1 and 2. The Government considers it desirable that the International Labour Conference should adopt international regulations in the form of a Draft Convention concerning holidays with pay.

3. The Government has repeatedly stated its view that international Conventions should be limited to laying down the basic principles of international regulation and should not enter into too much detail. For this reason the Government declares itself in favour of regulations laying down the principle, but considers nevertheless that it might perhaps be useful to complete the Draft Convention by a Recommendation containing detailed provisions as to its application.

FINLAND

1. Inasmuch as the question of paid holidays was dealt with in Finland as regards commercial employment by legislation in 1919 and as regards all persons employed under a contract of service in 1922, the adoption of an international Convention is recommended.

2. See the reply to Question 1.

3. The Draft Convention should include the principal provisions required concerning holidays so that these will be obligatory, but should not enter into the less important details which should be left to national laws or regulations.

HUNGARY

1. It would be desirable to adopt a Draft Convention.

2. In the event of the Conference not adopting a Draft Convention, a Recommendation should be adopted.

3. (i) It would be desirable to frame regulations laying down the principle and covering a certain number of details, but leaving these to be dealt with, for the most part, in the national laws and regulations.

(ii) The reply is in the affirmative.

INDIA

Introductory. — It has not proved possible in the time available for this question to be adequately examined. The attempt to formulate legislation on the subject in India would probably reveal a number of points which have not yet been considered. These might require treatment of a different kind from that suggested by the Questionnaire, particularly as the latter appears to have

European conditions mainly in view. The replies below indicate the Government of India's general attitude on the problem of "Holidays with Pay", but must not be regarded as exhaustive.

1 and 2. The Government of India consider a Recommendation preferable to a Draft Convention. A number of the more highly organised industrial establishments in India allow holidays with pay and the practice is virtually general in State establishments. The Government of India believe that the principle is sound, but every sound principle of labour welfare is not capable of satisfactory general enforcement by legislative enactment. In the present case any attempt to enforce a general system in India would meet with grave difficulties. Much of the labour employed in industry is drawn from and maintains contact with villages at long distances from industrial centres, and a holiday would be of little value to the workers unless it made it possible for them to revisit their village. But few could afford to make such a journey every year. Again, holidays would lose much of their value for the worker unless they could be taken at a time when, on account of family events or other circumstances, such as harvest work, he desired it, and for a period varying with his needs at the time. The systems in force in State establishments are nearly all elastic, in the sense that holidays can be allowed to accumulate for a period of years, and taken in substantial blocks. A system of this kind can be worked by mutual arrangement between employer and employed, but could hardly be enforced by law in any large number of establishments, without extensive administrative machinery whose cost might be disproportionate to the benefits received. Any legal system would have to be of an experimental nature, and could only be applied on a limited scale for some time to come.

3. The Government of India are not in favour of any Draft Convention. Any attempt to lay down detailed provisions in a Convention would probably render the Convention largely infructuous. A Convention affirming the principle and accompanied by a Recommendation giving guidance on the details is open to less objection.

'Iraq

1. The Government considers that the International Labour Conference should adopt in the form of a Draft Convention international regulations concerning holidays with pay.

2. The reply is in the affirmative.

3. For the present the Government considers that the Conference should limit the Draft Convention to the adoption of the principle involved.

Italy

1 and 2. The Government considers it desirable that the International Labour Conference should adopt, in the form of a Draft Convention, international regulations concerning holidays with pay.

3. (i) The Draft Convention should deal with the system of holidays with pay in its main features, and in this connection it would be advisable to adopt a Recommendation for laying down the criteria to be followed in the application of the principles.

Luxemburg

1 and 2. It is desirable that the International Labour Conference should adopt a Draft Convention concerning holidays with pay, or, if not a Draft Convention, at least a Recommendation.

3. It is preferable not to frame a too detailed Draft Convention ; the more detailed provisions should be the subject of a Recommendation.

The Netherlands

1. The Government fully recognises the great social value of a system of holidays with pay and, in principle, considers it just that efforts should be made to extend the measures already taken in this domain in the different countries. A Draft Convention such as is proposed in this question would undoubtedly contribute thereto and, under more favourable circumstances, the Government would not be opposed to it.

However, in view of the fact that the economic situation in the Netherlands is unfavourable, there can be no question of a general introduction of holidays with pay. A great number of undertakings would to-day find it impossible to bear the additional burden which such a measure would impose upon a large part of industry. Costs of production, which are already very high in the Netherlands, would rise still further. In view of these circumstances, the Government is obliged to reply to Question 1 in the negative.

This being its attitude, the Government has thought it well, in replying to the other points of the Questionnaire, to refrain from stressing details and, in general, from putting forward any concrete proposals. There would not be much point at the present time in assembling data, which could be furnished only after a widespread enquiry, and in basing thereon detailed proposals, for, at the moment when a favourable turn of the economic situation would permit a more detailed consideration of the adoption of international regulations on holidays with pay, there would be a grave risk of such data being regarded as out of date and of the proposals being no longer applicable.

2. The Government is likewise of opinion that the time is not favourable for the adoption of a Recommendation on this subject.

3. In view of the negative reply to Question 1, no reply is necessary.

Norway

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. (i) (*a*) The Convention should be limited to laying down the principle.

(ii) The reply is in the affirmative.

POLAND

1. The reply is in the affirmative.

2. The reply is in the negative.

3. In order to secure uniformity of application, the international regulations concerning holidays with pay should take the form of a Draft Convention comprising a series of rules dealing with all the important features of the problem. They ought not to be limited to a Convention of principle of a declaratory character like the Convention concerning the reduction of hours of work adopted by the Nineteenth Session of the International Labour Conference. A Recommendation dealing with questions of detail might, however, be a useful complement to the Draft Convention.

PORTUGAL

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. (i) (*a*) The reply is in the affirmative.

(ii) The reply is in the affirmative.

SPAIN

1 and 2. The decision of the Conference should take the form of a Draft Convention, since this would impose on the States Members that ratified it a real obligation.

3. (i) The Draft Convention should lay down the general principle and not go into details.

(ii) The Draft Convention might be completed by a Recommendation. The provisions of this should nevertheless not be too detailed. Methods of application should be left to the national laws and regulations.

SWEDEN

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. (i) (*a*) The Draft Convention should lay down the principle and aim at meeting fair minimum requirements concerning holidays with pay.

(*b*) The reply is in the negative.

(ii) A complementary Recommendation would be desirable.

SWITZERLAND

1, 2 and 3. The idea of granting a period of continuous rest every year to workers in the interests of their health and well-being can only be welcomed. This has already been done to a certain extent in Switzerland by legislation (by Federal legislation in the case of

the staff of public transport services and of apprentices, and by certain Cantonal laws in respect of various other categories of workers) and also voluntarily by means of numerous contracts of employment. While admitting that the idea of holidays with pay is in accordance with modern requirements and that it is obviously gaining ground, the Government observes that the present time does not seem to be very favourable for international regulation in this field. The general economic situation still continues to be far from satisfactory and it is not certain that there will be an improvement in the near future. Various undertakings which were hitherto giving of their own accord holidays to their staffs have found themselves compelled to make changes in order to adapt themselves to the crisis. The Government is inclined to think that it would hardly be possible to introduce, as a general rule, holidays with pay at a time when large numbers of workers are without work and others are only partially employed. It should be added that this measure, like the reduction of hours of work, would necessarily involve an increase in the cost of production, which would most particularly affect countries with high wages, like Switzerland, and would weaken their capacity for international competition. In view of the general economic situation and having regard to the differences in the conditions in various countries, the Government considers that *any attempt to lay down a Draft Convention should be abandoned and that a Recommendation should be regarded as sufficient.* It is subject to this reservation that the following replies have been framed.

In view of the preceding explanation, the Government refrains from replying to Question 3.

Union of South Africa

1. It is considered that the International Labour Conference should adopt a Draft Convention concerning holidays with pay.

2. Failing a Draft Convention, the Conference should adopt a Recommendation.

3. (i) The Draft Convention should be limited to laying down general principles. The inclusion of a number of precise rules, as advocated in the Grey Report No. V (page 83) tends to discourage States from ratifying Draft Conventions where national conditions do not permit of compliance with the precise rules laid down. It is suggested that the Draft Convention should provide for two methods of dealing with the matter, viz :

(*a*) Direct legislation or regulation by the competent authority ;

(*b*) The maintenance of machinery for fixing annual paid holidays in industries and occupations, or for groups and classes of employees not covered by direct legislation or regulation.

In connection with (*b*), machinery similar to that for which provision is made under Draft Convention No. 26 concerning the creation of minimum wage fixing machinery is contemplated. In South Africa, and, no doubt, in many other countries, the same machinery is used for fixing minimum wages, paid holidays and other conditions of employment.

(ii) The Draft Convention should be supplemented by a Recommendation.

UNITED STATES OF AMERICA

1. The reply is in the affirmative.

2. The reply is in the affirmative.

3. In view of the simplicity of the subject of holidays with pay, it would seem possible and desirable to cover all the necessary points in a concisely worded Convention. If, however, there are secondary points which it would seem undesirable to include in the Convention itself, there would seem to be no objection to a supplementary Recommendation.

YUGOSLAVIA

1, 2 and 3. The international regulations dealing with holidays with pay should take the form of a Recommendation.

DEFINITION OF HOLIDAYS WITH PAY

4. (i) Do you consider that the international regulations should include a definition of the expression " holidays with pay " ?

(ii) If so, what definition, or criteria for a definition, do you suggest ?

AUSTRIA

4. (i) The reply is in the affirmative.

(ii) The following definition is suggested : " By holidays with pay is meant the annual liberation of an employed person, for the purpose of mental and physical recreation, from the obligation to work during a previously specified number of consecutive days, which are not sick or convalescent leave, the employment relationship being maintained and the usual earnings being paid in full. "

BELGIUM

4. (i) The Government considers that a definition is not indispensable and that it might give rise to more disadvantages than advantages.

BRAZIL

4. (i) The reply is in the affirmative.

(ii) " Holidays with pay " should be defined as rest for fifteen working days during which the employed person concerned retains in full his right to his emoluments, salary, wages, percentages, commissions or gratuities.

CHILE

4. (i) No. This would be unnecessary.

(ii) See reply to paragraph (i).

CHINA

4. (i) It would be desirable to give a definition.

(ii) A definition of the expression "holidays with pay" should include the following criteria:

(1) Holidays other than public holidays and days of sickness and convalescence.

(2) A number of consecutive days during which each employed person who has fulfilled certain conditions of service determined in advance ceases work every year.

(3) The length of the holiday must be determined in advance.

(4) For the period of the holiday the employee must receive his normal remuneration.

CUBA

4. It should be sufficient merely to state that "employed persons who have given their services to an employer for one year are entitled to a holiday with pay of fourteen working days".

DENMARK

4. A detailed definition should not be necessary.

ESTONIA

4. The expression "holidays with pay" is sufficiently clear to make it unnecessary to burden the Draft Convention with a definition.

FINLAND

4. A definition of the expression "holidays with pay" should not be included in the Draft Convention, but the interpretation of the expression should be left to the national legislation of each country. The preamble to the Convention might, however, include a statement that the purpose of the holiday is to secure to the worker an opportunity for rest, recreation and the development of his faculties.

HUNGARY

4. (i) The reply is in the affirmative.

(ii) Holidays with pay are a specified period of rest accorded by an employer to a worker in his employment after a minimum period of service while continuing the employment; the worker must not take up any paid work during the period of the holiday, but receives his usual remuneration.

INDIA

4. No. The regulations will presumably prescribe the grant to every worker coming within their scope of pay in respect of a certain number of days in the year upon which he is not required to work. Certain conditions will have to be fulfilled by the worker before he is entitled to " holidays with pay ", and certain days will be excluded from the reckoning of the duration of those " holidays ". Nothing further seems to be required.

'IRAQ

4. The Government considers that in the event of a definition of the term " holidays with pay " being made, it should provide that the following are excluded : (*a*) the normal weekly holidays ; (*b*) official holidays of the State ; (*c*) religious holidays observed by the State ; (*d*) absence from duty on account of sickness.

ITALY

4. The Government considers that it would be superfluous to define holidays with pay, as the criteria on which this definition would be based will be indicated and elaborated in the text of the Convention.

LUXEMBURG

4. The expression " holidays with pay " does not seem to need a definition. It should, however, be made clear by a provision incorporated in the Recommendation that customary holidays such as Christmas, New Year's Day or various other holidays and the days of absence due to illness or domestic occurrences, are not covered by the proposed regulations in so far as the workers retain their wages in virtue of the law, agreement or usage.

THE NETHERLANDS

4. As on the one hand it is very difficult to give a detailed definition of the expression " holidays with pay " and as, on the other hand, the meaning of the established phrase seems in practice to be sufficiently clear, a definition could be omitted.

NORWAY

4. " Holidays with pay " means a continuous rest interval of a certain duration during which the worker gets the wage which he would have earned in ordinary working hours.

POLAND

4. No. A definition of the expression " holidays with pay ", the necessity for the inclusion of which would appear to be purely theoretical, would give rise to considerable difficulty. Moreover, the text of the Draft Convention as a whole would constitute a sufficient definition of holidays with pay for the purposes of international regulation.

PORTUGAL

4. (i) The reply is in the affirmative.

(ii) The expression " holidays with pay " implies the extension to all employees or workers with uninterrupted service of the traditional principle of paid holidays.

SPAIN

4. The expression " holidays with pay " is sufficiently clear in itself to make it unnecessary to give a definition in the international regulations.

SWEDEN

4. (i) The Government observes that it would hardly be necessary to define the term " holidays with pay " and that there is no doubt as to its meaning in Sweden. Moreover, the provisions of the Draft Convention would be of such a nature as to make these terms specific in various ways.

(ii) If a definition is considered necessary, it should apply the following criteria: the holiday should be annual and preferably continuous, its object should be to ensure to the worker facilities for recuperation and the worker should retain his wages during the period of the holiday.

SWITZERLAND

4. The Government regards it as necessary that the expression " holidays with pay " should be precisely defined so that the scope of the proposed measure may be realised. Views on the meaning of the word " holiday " are very much divided, as shown by experience. The expression might perhaps be defined as " a previously determined number of free days following each other without interruption, which the employer is required to accord to the worker while paying him his usual wages ".

UNION OF SOUTH AFRICA

4. (i) It would be exceedingly difficult to define the term " holidays with pay " without rendering the Draft Convention unworkable. The definition suggested on page 84 of the Grey Report is too restrictive. In South Africa, for instance, it has not been regarded as practicable at this stage to exclude public holidays from annual paid leave in all cases. It is also found that employees may prefer to have sick leave debited against their annual holiday in order to avoid financial loss. Although this practice is not to be encouraged, the financial position of employees sometimes leaves them no alternative, and it is considered unwise to impose a specific prohibition. The Union Government does not, therefore, favour inclusion of a definition of the expression " holidays with pay ".

UNITED STATES OF AMERICA

4. No. It is difficult to frame a satisfactory definition, and it would seem unnecessary as the terms of the Draft Convention would be sufficient for the purpose.

YUGOSLAVIA

4. (i) and (ii) It would certainly be necessary to include a definition of " holidays with pay " in the Recommendation. The definition should be framed so as to refer to a fixed number of days to be determined in advance, during which workers and employees fulfilling certain conditions of service would be entitled each year to cease work while continuing to receive, throughout the period, the whole of their remuneration. It goes without saying that time during which workers and employees have been prevented from working as a result of illness or accident should not be regarded as part of the annual holiday. A period of sickness cannot therefore be reckoned as part of the annual holiday period.

In the Government's opinion, the criteria for the definition of " holidays with pay " should be the following :

(1) Fulfilment of certain conditions by the workers and employees ;

(2) Determination in advance of the duration of the holiday with pay ;

(3) Enjoyment during the holiday of full remuneration.

SCOPE OF THE REGULATIONS

5. Do you consider that the regulations should apply to persons employed in the following classes of undertakings and establishments :

(*a*) industrial undertakings, including mines and transport by road, rail, inland waterway or air ;

(*b*) commercial and office establishments, including posts, telegraphs and telephones ;

(*c*) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit ;

(*d*) hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses ;

(*e*) theatres and places of public amusement ?

6. Are there any other undertakings or establishments that you consider should be included ? If so, what are they ?

7. Are there any classes of occupation not carried on in the undertakings and establishments referred to in Questions 5 and 6 that you consider should be included ? If so, what are they ?

AUSTRIA

5. (*a*), (*b*), (*c*), (*d*) and (*e*). The reply is in the affirmative.

6. Yes, newspaper undertakings (in respect of editorial staff (reporters) and all persons engaged as employees as well as in respect of manual workers).

7. Yes. Domestic servants, hall-porters in private houses (caretakers) and private chauffeurs should be included.

BELGIUM

5. (*a*), (*b*), (*c*), (*d*), (*e*) The replies are in the affirmative.

6. The reply is in the negative.

7. The reply is in the negative.

BRAZIL

5. (*a*), (*b*), (*c*), (*d*) and (*e*) The reply is in the affirmative.

6. Yes. The privilege of holidays with pay should also be extended to employees in newspaper-publishing firms, and in public services, whether they belong to the Central Government, States, municipalities or are leased to concession-holders.

7. Persons working on their own for various contractors during the year.

CHILE

5. (*a*), (*b*), (*c*), (*d*), (*e*) The reply is in the affirmative.

6. All undertakings or all establishments employing paid workers who do not rank as public officials; in Chile such officials come under a special scheme whereby they are entitled to fifteen days' paid holiday every eleven months.

7. Agriculture, maritime transport, domestic service, sea, river and lake fishing, and all paid workers in general.

CHINA

5. The reply is in the affirmative.

6. The Government does not propose any other undertakings or establishments.

7. The Government does not propose any other class of occupation.

CUBA

5. (*a*), (*b*), (*c*), (*d*) and (*e*) The reply is in the affirmative.

6. The international regulations should apply to commercial and industrial undertakings employing more than a certain number of persons, as is laid down in Act No. 40 of 1935, in force in the Republic of Cuba.

7. See the above reply.

DENMARK

5. (*a*) to (*e*) The reply is in the affirmative.

6 and 7. The Government considers that, in principle, all wage earners employed in an undertaking should be entitled to holidays, but in order not to make the ratification of the Convention difficult, it might perhaps be desirable to keep to the classes mentioned in Question 5.

ESTONIA

5. The reply is in the affirmative.

6. The reply is in the negative.

7. The reply is in the negative.

FINLAND

5. The legislation of Finland is already applicable to all the undertakings and establishments mentioned in the Questionnaire so far as persons working under a contract of service are concerned. The reply is therefore in the affirmative.

6 and 7. Although in Finnish legislation, as has already been mentioned, holidays with pay are provided for over a wider field, the international regulations might nevertheless be limited to the scope indicated in Question 5.

HUNGARY

5. The reply is in the affirmative.

6 and 7. The replies are in the negative.

INDIA

5. If the list is to be included in a Convention, it is far too wide, having regard to the fact that in many important countries there is no legislation of this kind. A much shorter list might enable more countries to embark on legislation and lead to more general progress. If the list is to be included in a Recommendation it is not unsuitable.

The competent authority should have discretion to select the classes of industrial establishment and any persons to whom the regulations will apply. The introduction of legislation of this type in countries where none exists at present is likely to present grave difficulties.

6 and 7. The reply is in the negative.

'IRAQ

5. The Government considers that regulations should apply to persons employed in the undertakings and establishments as specified.

6 and 7. The principle should, in the Government's opinion, be applied to all workers who are in regular employment.

ITALY

5, 6 and 7. The international regulations should cover all the industrial and commercial activities mentioned in Question 5 so as to extend the benefit of holidays with pay to all workers engaged without interruption in the various undertakings.

The Government considers that it would be desirable to adopt separate regulations in respect of agricultural workers and seamen, excluded from the scope of the Draft Convention.

LUXEMBURG

5, 6 and 7. The proposed regulations should be applicable to the different classes of undertakings or establishments referred to in the Questionnaire.

THE NETHERLANDS

5. Although it would not be easy to lay down regulations covering all the classes of undertakings and establishments mentioned — for example, difficulties would arise in the case of the establishments referred to in (*d*) and (*e*) where the majority of the persons employed change their employment frequently and quickly, — there would seem to be no valid reason for excluding from the international regulations any of the classes enumerated.

6. The reply is in the negative.

7. The reply is in the negative.

NORWAY

5. (*a*) to (*e*) The reply is in the affirmative.

6. The reply is in the negative.

7. The reply is in the negative.

POLAND

5. (*a*), (*b*), (*c*), (*d*) and (*e*) The replies are in the affirmative.

6. The international regulations should also apply to the handling of goods at docks, quays, wharves and warehouses.

7. The reply is in the negative.

PORTUGAL

5, 6 and 7. The Convention should apply to all undertakings belonging to any branch of economic activity having employees or workers with uninterrupted service.

SPAIN

5. The international regulations should apply to persons employed in the classes of undertakings and establishments mentioned in clauses (*a*), (*b*), (*c*), (*d*) and (*e*). In the last two of these categories, however, they should apply only to persons whose work is of a continuous and permanent character.

6. The Conference having always dealt separately with questions of agricultural and maritime employment, the Government's reply is in the negative.

7. The reply is in the negative, the basis indicated in Question 5 being considered sufficiently wide.

SWEDEN

5. (*a*) to (*e*) See the reply to Question 7.

6. See the reply to Question 7.

7. It would no doubt be desirable to bring under the Convention all the undertakings or establishments referred to in Question 5; but the Government thinks that it would be preferable to give the proposed international regulations a wider scope as in the Swedish law on protective labour legislation. The Government, therefore, proposes that the principal provision concerning the scope of the regulations should be given approximately the following form:

" The present Convention applies to all workers who are engaged substantially in a full-time continuous employment throughout the year; agricultural and maritime workers are, however, excluded from its scope."

The detailed wording of the provision considered here might usefully be left to the national laws and regulations.

SWITZERLAND

5. If the scope is made as extensive as is contemplated, it will in any case be necessary to take care that the regulation is sufficiently elastic. In this connection, the fact should not be lost sight of that regulations can be introduced only step by step, distinguishing the different classes according to their various requirements.

6. The reply is in the negative.

7. No observations.

UNION OF SOUTH AFRICA

5. The Draft Convention should be capable of application, through the machinery provided, to all occupations and industries. It will be seen from the replies to previous questions that the Union Government does not favour a Draft Convention which would lay down a set of precise rules applicable automatically to a number

of stated occupations or industries. The Draft Convention should rather set out the principles to be followed and should leave it to the States concerned to apply these principles in accordance with the dictates of expediency, and by means of the machinery to be prescribed in the Draft Convention.

6 and 7. If a list of undertakings, etc., is to be included in the Draft Convention, the list proposed in Question 5 would appear to be sufficiently inclusive.

UNITED STATES OF AMERICA

5. The regulations should cover all of the mentioned classes of undertakings and establishments. Also, specific mention should be made of quarries and oil production, as these branches of employment might otherwise not be construed as being included, owing to a certain indefiniteness in American terminology. The following terminology is suggested: "All establishments, including among them those engaged in mining, quarrying and oil production employing one or more persons other than those engaged in agriculture or domestic service."

6. No. (Domestic service, as a matter of justice, should be covered, but because of administrative difficulties such inclusion would seem impracticable at the present time.)

7. The reply is in the negative.

YUGOSLAVIA

5 and 6. The international regulations should cover skilled workers employed in industrial undertakings, commercial staffs and subordinate staff employed in the higher classes of work, the staff of banks and persons employed in insurance institutions, pharmacists' assistants, journalists, inland navigation employees, the staff of State transport undertakings, and the staff of undertakings in the printing and kindred trades.

7. The extension of the advantage of holidays with pay to persons employed in other branches of economic activity should be left to be dealt with by national legislation.

8. (i) Do you consider that the competent authority in each country should be permitted to exclude certain classes of persons from the scope of the international regulations ?

(ii) If the reply to (i) is in the affirmative, what classes do you suggest ?

AUSTRIA

8. (i) The reply is in the affirmative.

(ii) The Government suggests the possibility of excluding the manual workers and salaried employees in the post, telegraph and telephone services as these communication services in most

European countries are administered by the State and not by private employers and the holidays of the persons employed therein are therefore regulated by the provisions governing the holidays of State officials. Moreover, the possibility might be envisaged of excluding the persons employed in public transport services (railway, navigation and air undertakings) as the conditions of service of these persons are also regulated by special provisions which are based in many instances on the provisions regulating the conditions of service of post, telegraph and telephone employees.

BELGIUM

8. (i) The reply is in the negative.

BRAZIL

8. (i) It should be left to the discretion of each State to exclude certain categories from the scope of the international regulations.

(ii) Persons having a share in the profits, and those who are not required to keep regular hours or to work under orders.

CHILE

8. (i) The reply is in the negative.

CHINA

8. (i) The reply is in the affirmative.

(ii) Persons employed for governmental services.

CUBA

8. The reply is in the negative.

DENMARK

8. The reply is in the negative.

ESTONIA

8. (i) The Government considers that the competent authority in each country should be permitted to exclude certain classes of persons from the scope of the international regulations.

(ii) The determination of the classes to be excluded should, however, be left to the discretion of the competent authority and should not be settled by the Draft Convention, since the necessity for excluding a particular class would not become evident until the provisions of international regulations are actually being put into effect.

FINLAND

8. The reply is in the affirmative. Permission should be given for the exclusion from the scope of the regulations of undertakings in which only members of the employer's family are employed, public services in which the staff is not employed under a contract of service, persons occupying responsible positions of management, and commercial travellers and representatives who do not work under the immediate supervision or control of other persons.

HUNGARY

8. (i) The reply is in the affirmative.

(ii) It would be desirable to make it permissible for the Government of each country to exempt artisans and petty tradesmen who do not ordinarily employ more than two workmen, excluding apprentices, from the requirement to grant holidays, with pay, subject to the reservation that this exemption should not affect holidays with pay in respect of apprentices.

INDIA

8. (i) The reply is in the affirmative.

(ii) Classes should not be specified.

'IRAQ

8. Yes; for example, casual labourers.

ITALY

8. It should not be permissible for the States Members to exclude specified classes of workers from the scope of the international regulations.

It is only in exceptional cases and for reasons of public interest that it should be permissible for the competent authorities, after ascertaining the views of trade union organisations, to suspend for a specified period the application of the internal measures adopted for giving effect to the provisions of the Convention.

LUXEMBURG

8. It should be permissible to exempt persons who, without receiving any money wages, work in the establishments referred to in Question 5 purely for philanthropic or religious considerations.

It should also be permissible to exempt the establishments referred to in (*a*) and (*d*) of Question 5 employing only a limited number of persons provided that this number in no case exceeds twenty a year on an average.

THE NETHERLANDS

8. The Government does not at present see any reason for giving the competent authority in each country the right to exclude certain classes of persons from the scope of the international regulations.

NORWAY

8. The reply is in the negative.

POLAND

8. (i) The reply is in the affirmative.

(ii) The competent authority in each country should be authorised to exclude from the scope of the international regulations persons employed as public officials.

PORTUGAL

8. (i) The reply is in the affirmative.

(ii) The competent authority should be permitted to exclude undertakings of any branch of economic activity from the obligation to grant holidays with pay on grounds of pressing necessity or public interest.

SPAIN

8. The exclusion of any classes of persons from the scope of the Draft Convention by national authorities should not be permitted if the scope is restricted within the limits indicated by the replies to the previous questions. The most that might be done would be to admit the principle of such exceptions provisionally and in exceptional circumstances, but subject to prior consultation with qualified representatives of employers and workers and subject always to fair compensation being given.

SWEDEN

8. (i) The adoption of provisions excluding certain categories of persons from the scope of the international regulations seems to be a question which might be left to the national laws and regulations.

(ii) No reply is given.

SWITZERLAND

8. (i) and (ii) It is indispensable that the competent authority should have the power to exclude certain categories of persons from the scope of the international regulations. The Government suggests that the categories to be considered in this connection are persons not having a contract of employment strictly so called, such as commercial travellers working on a commission basis, home workers and persons working only for a certain number of days or hours with the same employer.

UNION OF SOUTH AFRICA

8. The competent authority should be free to exclude any class of persons from the scope of any national measure adopted to fix paid holidays in terms of the international regulations.

UNITED STATES OF AMERICA

8. (i) The reply is in the negative.

YUGOSLAVIA

8. (No reply.)

9. (i) Do you consider that separate international regulations should be adopted for the various undertakings, establishments and occupations referred to in Questions 5 and 6?

(ii) If the reply to (i) is in the affirmative, how do you propose to distribute the various classes among the several regulations?

AUSTRIA

9. (i) The reply is in the affirmative.

(ii) The classes indicated under Question 5 (*a*), (*b*) and (*d*) should be grouped together under the same regulations.

Separate regulations should be adopted for: the class indicated under Question 5 (*c*), the class indicated under Question 5 (*e*), the class indicated under Question 6 (newspaper undertakings), the class indicated under Question 7 (domestic servants, private hall-porters and private chauffeurs).

BELGIUM

9. (i) The reply is in the negative.

BRAZIL

9. (i) The reply is in the affirmative.

(ii) The Government considers that it would be desirable to provide for classification by two categories:

(*a*) Commercial and banking establishments and charity organisations.

(*b*) Industrial undertakings of all kinds, whatever may be the branch of industry or the nature of the activity concerned, newspaper-publishing concerns, services of communications and transport, by land and by air, and public services (belonging to the central Government as well as to States or municipalities or leased to concession-holders).

CHILE

9. (i) The reply is in the negative.

CHINA

9. (i) The Government considers this unnecessary.

CUBA

9. The reply is in the negative.

DENMARK

9. The reply is in the negative.

ESTONIA

9. As the Government is in favour of regulations dealing only with general principles, it sees no objection to all the undertakings and occupations mentioned in Question 5 being covered by a single Draft Convention.

FINLAND

9. The regulations might take the form of a single international Convention.

HUNGARY

9. (i) No. The question could be dealt with in the same Draft Convention.

INDIA

9. The reply is in the negative.

'IRAQ

9. The Government sees no advantage in the adoption of separate regulations for various undertakings.

ITALY

9. If the conditions and qualifications required in order to be able to obtain " annual holidays with pay " are laid down, it does not seem necessary to distinguish between workers in industrial undertakings and those in commercial establishments or those particularly engaged in office work.

LUXEMBURG

9. With a view to safeguarding the appreciably higher standard of the existing working conditions of railway workers and of salaried employees, it would be desirable to have separate regulations for the categories in question, either within the framework of the proposed single Draft Convention or by separate Draft Conventions.

It should be clearly understood that in all cases the beneficiaries of special systems should be able to avail themselves of the provisions of the general law.

THE NETHERLANDS

9. (i) In actual fact the regulations could not be the same for all the undertakings mentioned above; consideration must be given to the particular conditions of each undertaking, at any rate when detailed provisions are being framed.

(ii) At the moment the Government has not at its disposal sufficient information to permit it to express an opinion as to the best method of distribution.

NORWAY

9. No, a general regulation should be adopted.

POLAND

9. The reply is in the negative.

PORTUGAL

9. (i) The reply is in the negative.

SPAIN

9. There is no necessity to adopt separate international regulations if the Convention is to be limited to laying down the basic principles.

SWEDEN

9. (i) If the Convention is drafted as proposed in the reply to Question 3, separate regulations do not seem to be necessary.

SWITZERLAND

9. (i) and (ii). The Government does not consider it advisable to have several international regulations and prefers a single Recommendation or Convention. It should, however, be permissible for special measures to be taken, where necessary, by means of national laws and regulations within the limits of the Convention, notably in respect of undertakings, establishments and occupations mentioned in Questions 5 and 6.

UNION OF SOUTH AFRICA

9. If a Draft Convention is adopted, setting out general principles only, it will be unnecessary to have separate regulations for various undertakings, establishments and occupations. The suggestions made below in reply to Questions 12 to 18 would apply to all the industries affected.

UNITED STATES OF AMERICA

9. (i) The reply is in the negative.

YUGOSLAVIA

9. (No reply.)

UNIFORM OR DIVERSE SYSTEMS

10. Do you consider that a single system of holidays with pay should be prescribed for all classes of employed persons coming within the scope of the regulations ?

If the reply to this question is in the negative, please indicate in your replies to the questions that follow the various systems of holidays with pay that you propose and the classes to which they apply.

AUSTRIA

10. No. In the classes indicated in Question 5 (*a*), (*b*) and (*d*) a distinction should be made between manual workers and salaried employees, as well as in each of the classes indicated in Question 5 (*c*) and (*e*) and Question 6 (newspaper undertakings). As regards the classes mentioned in the reply to Question 7 (domestic servants, hall-porters in private houses and private chauffeurs) only a system for workers comes into consideration.

The Government suggests therefore the consideration of the following separate Draft Conventions :

(1) For the classes of occupation indicated in Question 5 (*a*), (*b*) and (*d*) — manual workers ;

(2) For the classes of occupation indicated in Question 5 (*a*), (*b*) and (*d*) — salaried employees ;

(3) For the classes of occupation indicated in Question 5 (*c*) with separate regulations for workers on the one hand and employees on the other ;

(4) For the classes of occupation indicated in Question 5 (*e*) with separate regulations for workers on the one hand and employees on the other ;

(5) For the class indicated in the reply to Question 6 : newspaper undertakings, with separate regulations for workers on the one hand and employees on the other ;

(6) For the class indicated in the reply to Question 7 (domestic servants, hall-porters in private houses and private chauffeurs) in which only workers come under consideration.

BELGIUM

10. The reply is in the affirmative.

BRAZIL

10. The reply is in the affirmative.

CHILE

10. No. Three distinct systems should be prescribed : for industrial workers, for persons in domestic service and for private employees. Paid holidays for these categories are regulated in Chile by Articles 98, 65 and 158 respectively of the Industrial Code.

CHINA

10. It would be desirable to have a single system of holidays with pay.

CUBA

10. The reply is in the affirmative.

DENMARK

10. Yes; the competent authority in each country should, however, be in a position to grant exemptions where special circumstances justify it.

ESTONIA

10. The reply is in the affirmative.

FINLAND

10. It is customary in most countries for longer holidays to be given to intellectual workers than to manual workers and this principle is also applied in the Finnish legislation. The same principle is recommended for the international regulations. As difficulties might be encountered in drawing the line between intellectual workers and manual workers, the determination of the limit should be left to be dealt with by national laws and regulations.

HUNGARY

10. It would not be practicable to prescribe a single system of holidays with pay for all classes of workers. There are the more favoured classes who have been getting holidays with pay for years even in countries in which the larger part of the workers do not get them. Various distinctions as regards the length of the holiday are also made as a result of custom. International regulations should take these developments into account.

INDIA

10. No. The scheme should provide a large measure of elasticity. Systems appropriate in one country and even one industry may be inappropriate in another (see reply to Questions 1 and 2 above). No attempt should be made to do more than define the proportion of holidays to working days, and the application should be left to be worked out with reference to local conditions.

'IRAQ

10. The Government considers that the principle should be applied to all classes by a uniform system.

ITALY

10. The Government considers that a distinction should be made between workers and salaried employees.

LUXEMBURG

10. See the reply to Question 9.

THE NETHERLANDS

10. At the moment the Government considers that, so far as is consistent with its reply to Question 9, there is no objection to a uniform system; it wishes, however, to reserve the right to express its definitive opinion on this subject later.

NORWAY

10. The reply is in the affirmative.

POLAND

10. The Draft Convention should provide for three different systems: (*a*) for manual workers; (*b*) for salaried employees, and (*c*) for young persons of less than 18 years of age. Having regard to the influence that holidays may have on the development and health of young people, the duration of the holiday granted to young people should be longer than that for adult workers.

PORTUGAL

10. No. It should be left to the discretion of each State to adopt special systems which may be deemed by it to be suitable for the different branches of economic activity.

SPAIN

10. For the reasons indicated above the system prescribed by the international regulations, assuming that these are limited to the basic principle, should be the same for all the various classes of workers to whom they apply.

SWEDEN

10. The reply is in the affirmative.

SWITZERLAND

10. If a uniform regulation is decided upon, the differences in conditions should nevertheless be taken into consideration and in particular the question of defining the distinction between employers and workers should be left to be settled by national laws and regulations.

UNION OF SOUTH AFRICA

10. The regulations should lay down minimum conditions applicable to all classes of employed persons coming within the scope of the regulations.

UNITED STATES OF AMERICA

10. The reply is in the affirmative.

YUGOSLAVIA

10. Although there would be an advantage in providing a single system for all classes of employed persons, it would be better to keep open the possibility of dealing with the matter differently for certain classes, especially if the Recommendation should apply to groups of employed persons who, in the Government's view, should not for the time being be included within its scope — such as, for example, apprentices, domestic servants, craftsmen in handicraft undertakings, unskilled industrial workers not in permanent employment, and agricultural workers.

11. (i) Do you consider that a special system should be prescribed in the case of apprentices ?

(ii) If so, how do you consider apprentices should be defined?

(iii) What special system do you propose for apprentices ?

AUSTRIA

11. (i) The reply is in the affirmative.

(ii) An international definition of the term " apprentice " would presumably give rise to difficulties as the interpretation of this expression in the Industrial Codes of the different States Members probably varies.

(iii) In view of the fact that apprentices are young people and therefore still developing physically, a longer holiday should be envisaged for them than for other employed persons, provided they have not yet completed their sixteenth year. Holidays for such apprentices should be one week longer than the holiday prescribed for other employed persons.

BELGIUM

11. (i) The reply is in the affirmative.

(ii) An apprentice should be defined as any person, male or female, who, after having completed compulsory school attendance, is employed in an industrial, commercial or other undertaking for the purpose of learning a specific trade.

(iii) The Government proposes that fourteen days' holiday be allotted to apprentices from the first year of their employment.

BRAZIL

11. (i) The reply is in the negative.

CHILE

11. (i) The reply is in the negative.

CHINA

11. It would be desirable to provide a special system for apprentices.

CUBA

11. No. Apprentices are covered by the Cuban Act mentioned in the reply to Question 6. It should be noted, however, that, for purposes of the calculation of work done, this Act requires only six or seven hours a day in the case of apprentices under 18 years of age.

DENMARK

11. A system of holidays with pay should be prescribed also in the case of apprentices.

ESTONIA

11. The reply is in the negative.

FINLAND

11. The reply is in the negative.

HUNGARY

11. (i) The reply is in the affirmative.

(ii) An apprentice is an employee whom an employer has undertaken to train in a properly specified occupation or occupations during a specified period, subject to specified conditions; the apprentice, on his side, undertakes to work for his employer so long as is necessary for obtaining training in the occupation or occupations in question, as the case may be.

(iii) It is necessary to provide for a longer holiday in the case of apprentices than that accorded to adult workers belonging to the least-favoured class; this point should also be taken into consideration in specifying the minimum period of holidays with pay.

INDIA

11. The reply is in the negative.

'IRAQ

11. See the reply to Question 10.

ITALY

11. It does not seem advisable to prescribe a special system in the case of apprentices.

LUXEMBURG

11. A special system in their favour should be prescribed in the case of all young persons below 18 years of age.

The minimum duration of their annual holiday should be fixed at seven days.

THE NETHERLANDS

11. A special system for apprentices does not seem necessary.

NORWAY

11. In the Draft Convention no special system should be prescribed in the case of apprentices.

POLAND

11. No; apprentices should benefit by the special scheme for young persons.

PORTUGAL

11. (i) The reply is in the negative.

SPAIN

11. A special system for apprentices might be considered expedient in view of their peculiar situation, the details being left to be settled by national laws and regulations, provided that the basic principle of the holiday is respected.

SWEDEN

11. (i) The reply is in the negative.

SWITZERLAND

11. (i), (ii) and (iii) The Government does not consider it advisable to prescribe a special system in the case of apprentices. On the other hand, the need for introducing special regulations in respect of young workers in general (workers and apprentices) in so far as they do not get a minimum holiday of six working days might be considered. This minimum should be taken into consideration at least in respect of young persons under 18 years of age.

UNION OF SOUTH AFRICA

11. No special system should be prescribed in the case of apprentices. In South Africa apprentices generally enjoy the same holiday privileges as journeymen.

UNITED STATES OF AMERICA

11. (i) No. Same as other employees.

YUGOSLAVIA

11. See the reply to Question 10.

QUALIFYING CONDITIONS AND DURATION OF HOLIDAYS

12. (i) Do you consider that the right to holidays should be acquired only after a minimum period of uninterrupted service with the same employer ?

(ii) Do you consider it necessary to include in the international regulations any provision concerning the meaning of " uninterrupted service ", and, if so, what provision do you suggest ?

13. What do you consider should be the minimum period?

AUSTRIA

12. (i) In principle, yes ; the extent to which consecutive periods of service with different employers might be taken into account should be left to be decided by national laws and regulations.

(ii) The reply is in the negative.

13. The minimum period of service should be one year for manual workers and six months for salaried employees.

BELGIUM

12. (i) The reply is in the negative.

(ii) The reply is in the negative.

13. The minimum period should be one year.

BRAZIL

12. (i) and (ii) The reply is in the affirmative.

The Government understands by continuous service, service performed under the same employer during a period of twelve months.

13. In special cases, one hundred and fifty working days during a period of twelve months.

CHILE

12. (i) and (ii) In so far as private employees and domestic workers are concerned, one year's service should be required for the first holiday and for the following holidays. In the case of industrial workers, a minimum number of days' work during the year preceding the holiday should be required in order to qualify for a holiday. It should be prescribed, particularly in the case of industrial workers, that when the undertaking or establishment where they are employed changes its owner, the new employer shall take into account, for the purpose of the holiday, the period of service already spent with his predecessor.

13. One year's service.

CHINA

12. (i) The reply is in the affirmative.

(ii) The Government does not consider this necessary.

13. One year.

CUBA

12. (i) Yes. A minimum period of service of six months or one year should be prescribed. The Cuban Act allows seven days' holiday to employed persons who have worked for six months, and fourteen days to those who have worked for one year.

(ii) Uninterrupted service is that which is accomplished without any interruption other than those prescribed by law: eight-hour working day, Sunday rest, sickness, maternity, etc.

13. Six months' service.

DENMARK

12. Holidays should, in principle, be accorded each year even in case of a change of service; the Government, however, considers that, owing to practical considerations and having regard to the possibilities of ratification of the Convention, the details relating to this subject, including the question of fixing a minimum period of continuous service with the same employer, should be left to be dealt with by the national laws and regulations and that, if need be, they should form the subject of a Recommendation.

13. See the reply to Question 12.

ESTONIA

12. (i) The reply is in the affirmative.

(ii) The reply is in the negative.

13. The Government suggests the minimum period required by the Estonian law on the subject, namely one year.

FINLAND

12. (i) The reply is in the affirmative.

(ii) The definition of the expression "uninterrupted service" should be left to be dealt with by the laws and regulations of each country.

13. Under Finnish legislation the right to a holiday is acquired after a period of six months' service, but the application of this provision has given rise to some difficulties in practice. For the international regulations a minimum period of service of one year is recommended.

HUNGARY

12. (i) The reply is in the affirmative.

(ii) Yes. Service should be regarded as continuous as long as it is not terminated or is only interrupted for a certain time by one of the contracting parties, or by both of them, as the case may be. If the interruption of service does not tend to terminate it, such an interruption should not be regarded as affecting its continuity.

13. Twenty-six weeks.

INDIA

12. (i) The reply is in the affirmative.

(ii) A period of service under the same employer should be regarded as " uninterrupted " if during the period the worker has not absented himself from work except with permission or on medical grounds. Sickness for a limited period (say twenty-one days) should not count as an " interruption ".

13. One year. This should be reckoned from fixed dates, e.g. the beginning of each quarter in the year, incomplete quarters being ignored.

'IRAQ

12. (i) The reply is in the affirmative.

(ii) The Government favours the inclusion of an interpretation of the expression " uninterrupted service " so as to ensure that absence on account of sickness cannot be regarded as a break in the service.

13. One year.

ITALY

12. (i) A minimum period of service with the same employer should have been accomplished as a condition of the right to holidays.

(ii) It seems desirable that the meaning of the term " uninterrupted service " should be defined in the international regulations in such a way as to include under this definition continuous service accomplished in the same undertaking, even where this arises from several successive contracts.

13. The minimum period of service should be six months in the case of workers and one year in the case of salaried employees.

LUXEMBURG

12. The right to holidays should appertain to all workers after each year of continuous service with the same employer or in the same undertaking.

Continuity results from the completion of a minimum number of working days, in accordance with professional and local usage, days of absence due to sickness, domestic occurrences, intermittent unemployment or to *force majeure* of any other kind being assimilable to working days.

13. The minimum period of service should be one year.

THE NETHERLANDS

12. (i) As a general rule, the right to holidays should be acquired only after a minimum period of uninterrupted service with the same employer. In this connection account must be taken of the special situation of the classes referred to in Question 5 (*d*) and (*e*), to which attention has been drawn above.

(ii) A provision concerning the meaning of " uninterrupted service " should be included.

13. The minimum period of service should be fixed at, for example, one year.

NORWAY

12. (i) The reply is in the affirmative.

(ii) The reply is in the negative.

13. Six months.

POLAND

12. (i) The reply is in the affirmative.

(ii) The meaning of " uninterrupted service " should be determined by national laws or regulations.

13. One year.

PORTUGAL

12. (i) The reply is in the negative.

(ii) Yes. Uninterrupted service should mean service which has been performed regularly and assiduously during the year.

13. Two years' service.

SPAIN

12. (i) and (ii) The right to holidays with pay should be acquired only after a minimum period of uninterrupted service with the same employer. It is not considered necessary to define the meaning of the expression " uninterrupted service " in the international regulations, but if a definition is deemed essential it should be limited to the continuity of legal relationship between employer and worker irrespective of whether there is in fact a daily rendering of services.

13. The minimum period of service should be one year.

SWEDEN

12. (i) The right to holidays should be acquired only after a certain period of service with the same employer.

(ii) The adoption of the provisions referred to here seems to be a question which might be left to the national laws and regulations.

13. The Draft Convention should stipulate not the minimum period, but the maximum period of service on the completion of which the national laws and regulations may make the acquiring of the right to holidays conditional.

Owing to the fact that holidays are generally regarded as a benefit to be enjoyed annually and also in view of the legislative provisions in the majority of cases, the length of the period of service required for the worker to acquire the right to holidays should be twelve months at the most.

Switzerland

12. (i) The right to holidays should be acquired only after a minimum period of uninterrupted service with the same employer. Such a rule would exclude certain categories of workers as, for instance, seasonal workers and building trade workers, who have in any case to interrupt their work temporarily and consequently feel the need for a period of rest less than the other workers and employees who work day after day at the same place.

With a view to eliminating the risk of a worker being discharged before completing the minimum period of continuous service, it might be provided that in the event of such a dismissal for no fault of his own, the worker concerned would be entitled to a proportionate part of the holiday or to a corresponding payment.

It would be desirable to clear up the legal position arising from a change in the ownership of a workshop or place of employment. The question arises whether, in such cases, the service put in with the previous employer should not be taken into account.

(ii) The Government is inclined to consider that the meaning of " uninterrupted service " should be precisely defined. Particularly, absence for a brief period due to illness should not be considered as an interruption of continuous service. It might, however, be left to the national laws and regulations to deal with this question.

13. One year.

Union of South Africa

12. (i) The right to holidays should be acquired only after a minimum period of uninterrupted service with the same employer. Although this may deprive seasonal workers and casual employees of a right enjoyed by persons in regular employment, it is the fairest and simplest method of qualification.

(ii) It is inadvisable to include a detailed definition of the term " uninterrupted service ", but it should be made clear that the competent authority in each State is empowered to define the term in such a way as to condone temporary breaks in service. Unless this is done, the danger exists of employees being dismissed for the purpose of interrupting their service.

13. The minimum period of qualification for holiday should be one year, but provision should be made for the period to be expressed in terms of days or shifts worked. Daily paid employees sometimes miss a shift or two, and it is not desirable in such cases to regard their service as having been automatically interrupted. The period of qualification for such workers is best expressed in terms of time worked, e.g. 312 working shifts.

UNITED STATES OF AMERICA

12. (i) The reply is in the affirmative.

(ii) Yes. Definition should make clear that minor absences, due to illness, lay-offs, etc., should not be excluded when computing uninterrupted service. Also, in case of workers *discharged* after a substantial part of the service year had been completed should be entitled to a proportionate payment in lieu of a paid vacation.

13. One year.

YUGOSLAVIA

12. The right to a holiday with pay should be conditional on having spent a certain minimum period of continuous service with one employer or in one undertaking.

13. If the Recommendation applies to the persons indicated in the reply to Question 10, who in the Government's view should not be included within the scope of the regulations, the minimum period of uninterrupted service should be extended to one, two and three years.

14. What do you consider should be the minimum duration of the holiday corresponding to the minimum period of service?

AUSTRIA

14. For manual workers the minimum duration of the holiday should be one week after one year's uninterrupted service and, for salaried employees, two weeks after six months' uninterrupted service.

BELGIUM

14. The minimum duration should be six days.

BRAZIL

14. Seven days.

CHILE

14. For industrial workers, a holiday of seven working days, capable of being increased in proportion to the number of days of work done during the year; for employees and domestic workers, fifteen working days.

CHINA

14. Seven days.

CUBA

14. Seven days' holiday for six months' service; fourteen days for one year.

DENMARK

14. The minimum duration of the holiday should be fixed at six working days combined with two Sundays.

ESTONIA

14. The minimum duration of the holiday should be at least seven days, as is provided by the Estonian legislation at present in force.

FINLAND

14. It is proposed that the minimum duration of the holiday should be seven working days, as is the case under the legislation in force in Finland.

HUNGARY

14. Three days should be the minimum duration of the holiday corresponding to a minimum period of twenty-six weeks of service, in the case of the least-favoured class. A gradual increase in the minimum duration of the holiday in respect of higher categories would be justified.

INDIA

14. Fourteen days.

'IRAQ

14. Ten days minimum.

ITALY

14. The minimum duration of the holiday should be six days in the case of workers and fifteen days in the case of salaried employees.

LUXEMBURG

14. The minimum duration of the holiday should be four days.

THE NETHERLANDS

14. The minimum duration of the holiday corresponding to the period of service proposed under Question 13 should be fixed at approximately six days a year.

NORWAY

14. Nine working days.

POLAND

14. Manual workers, eight days; salaried employees, at least fifteen days; young people, fifteen days.

PORTUGAL

14. Three days immediately before or after the weekly day of rest or a public holiday.

SPAIN

14. The minimum duration of the holiday should be seven days.

SWEDEN

14. Twelve working days.

SWITZERLAND

14. The minimum duration of the holiday should be fixed at one week (= six working days). The Government is of the opinion that there should be no lowering of this limit if the object of the holiday — the health and well-being of the worker and opportunity for recuperating his strength — is to be attained. In view of this consideration, Sundays and public holidays should not be reckoned as part of this minimum period. On the other hand, Saturdays, even when the afternoons are free, should be considered as full working days.

UNION OF SOUTH AFRICA

14. The minimum duration of the holiday should be six days per annum.

UNITED STATES OF AMERICA

14. One week (i.e. normal number of working days in calendar week.)

YUGOSLAVIA

14. The minimum annual holiday should be six working days. This minimum holiday should not be interrupted.

15. (i) Do you consider that the duration of the holiday should increase as the length of the period of service increases?

(ii) If so, please indicate what you consider should be the successive stages in the period of service and the corresponding minimum duration of the holiday after completion of each stage.

AUSTRIA

15. (i) The reply is in the affirmative.

(ii) Under Austrian legislation the provisions referred to in the preliminary observations are in force.

BELGIUM

15. (i) The reply is in the affirmative.

(ii) The Government considers that the duration of the holiday should be nine days for all persons who have been in the uninterrupted service of the same employer for more than two years and less than ten years; this holiday should be increased to fifteen days for persons who have completed an uninterrupted service of ten years or more; to twenty-one days for those who have completed fifteen years or more.

BRAZIL

15. (i) The reply is in the affirmative.

(ii) One hundred and fifty to two hundred working days : seven days ; two hundred and one to two hundred and fifty working days : eleven days ; over two hundred and fifty working days : fifteen days of holiday, during a period of twelve months in all cases. The holiday should be continuous in the case of workers below 18 years or over 50 years of age.

CHILE

15. (i) and (ii) Yes ; but the proportion between the number of days of work done and the duration of the holiday should be fixed by national laws and regulations.

CHINA

15. (i) The reply is in the affirmative.

(ii) (*a*) Any person who has been in the uninterrupted service of the same employer for more than one year and less than three years should be entitled to seven days' special holiday with pay per year.

(*b*) Any person who has been in the uninterrupted service of the same employer for more than three years and less than five years should be entitled to ten days' special holiday with pay per year.

(*c*) Any person who has been in the uninterrupted service of the same employer for more than five years and less than ten years should be entitled to fourteen days' special holiday with pay per year.

(*d*) Any person who has been in the uninterrupted service of the same employer for more than ten years should be entitled to an additional day for each additional year ; but the total number of days' holiday with pay should in no case exceed thirty days a year.

CUBA

15. (i) and (ii) Yes. For five years' service, one month's holiday ; for ten years, one and a-half months ; for fifteen years, two months, for from twenty-five to thirty years, three months.

DENMARK

15. As stated in the reply to Question 14, the Government considers that the six working days combined with two Sundays should constitute a *minimum* so as to make a longer holiday possible, where necessary, in the case of certain classes of undertakings or of persons with a longer record of service.

ESTONIA

15. The reply is in the affirmative.

FINLAND

15. Only if the holiday is of longer duration should its length be made dependent on the length of the period of service; this is the case under the Finnish legislation. Thus, for a period of service of one year the corresponding holiday might be two weeks; for a period of service of five years, three weeks; and for a period of service of ten years, four weeks.

HUNGARY

15. (i) The reply is in the affirmative.

(ii) In each State, the extent of the increase in the minimum duration of the holiday in this instance as well as in the one referred to in Question 14 should be specified by legislation.

INDIA

15. The reply is in the negative.

'IRAQ

15. The Government does not consider that the point raised in this question should be included in the Draft Convention.

ITALY

15. (i) The minimum duration of the holiday corresponding to a minimum length of service having been fixed, further elaboration of this principle should be left to be dealt with in the national laws and regulations.

(ii) However, the Government considers that the regulations might also lay down the general principle of a progressive increase in the duration of the holiday as the length of the period of service increases. The rate of this increase should be left to the discretion of the law-making authorities.

LUXEMBURG

15. (i) The duration of the holiday should be in proportion to the years of service with the same employer or in the same establishment.

(ii) This duration should be fixed at five days, at least, after five years of service, at seven days after ten years and at twelve days after twenty years of service.

Under special systems, the minimum limit of this duration should be ten days after three years and twenty days after five years of service.

THE NETHERLANDS

15. It is desirable that the duration of the holiday should increase as the length of service increases.

NORWAY

15. The Draft Convention should lay down only the minimum duration of the holiday and not prescribe special rules for increasing the duration of the holidays proportionately to the increase in the period of service.

POLAND

15. (i) The reply is in the affirmative.

(ii) Manual workers, after three years, fifteen days; salaried employees, after three years, one month.

PORTUGAL

15. (i) The reply is in the affirmative.

(ii) The question of the increase of the duration of the holiday with pay proportionately to the length of service should be left to the discretion of each State in view of the difficulty there would be in establishing a strict standard for all economic activities.

SPAIN

15. The duration of the holiday should increase with each period of two years of service up to a total of fifteen days a year.

SWEDEN

15. (i) The reply is in the affirmative.

(ii) The adoption of the provisions referred to here should be left to the national laws and regulations.

SWITZERLAND

15. (i) and (ii) The Government is of the opinion that the international regulations should fix only the minimum duration of the holiday and perhaps lay down the principle of a progressive increase thereof in accordance with the duration of the service. Other questions of detail relating to this point should be dealt with by the national laws and regulations. The national laws and regulations should particularly deal with the gradation of the period of the holidays in proportion to the period of service as well as to the maximum duration of the holidays.

The introduction of special measures in respect of employees and workers should likewise be left to the national laws and regulations.

UNION OF SOUTH AFRICA

15. In laying down simple minimum requirements, it is not advisable to include provision for increases in the duration of the minimum holiday according to length of service. This is emphatically one of those details in regard to which no attempt should be made to bind States.

UNITED STATES OF AMERICA

15. (i) No, not as a part of the proposed Convention.

YUGOSLAVIA

15. The annual holiday should be extended in proportion to the length of uninterrupted service. The period of uninterrupted service giving a right to an extension of the holiday with pay should be fixed by the States Members of the International Labour Organisation, who should exercise their own discretion and legislate separately for the particular classes of persons mentioned in the reply to Question 10. Account might also be taken of the age of the employed person with a view to a proportionate extension of the duration of the annual holiday.

16. Do you consider that any, and if so which, of the following should be excluded from the reckoning of the duration of the holiday :

(*a*) Sundays ;

(*b*) legal public holidays ;

(*c*) Saturday afternoons ?

AUSTRIA

16. (*a*), (*b*) and (*c*) Sundays, legal public holidays and Saturday afternoons should be included in the holiday period.

BELGIUM

16. (*a*) (*b*) and (*c*) The replies are in the affirmative.

BRAZIL

16. (*a*) and (*b*) The reply is in the affirmative.

(*c*) The reply is in the negative.

CHILE

16. (*a*) and (*b*) The reply is in the affirmative.

(*c*) The reply is in the negative.

CHINA

16. Items (*a*) and (*b*) may be excluded.

CUBA

16. The Cuban Act excludes Sundays and public holidays when the holiday granted is one of seven or fourteen working days.

DENMARK

16. The holiday should be made up of working days; and Sundays — but not Saturday afternoons — should be excluded from the reckoning of the duration of the holiday.

ESTONIA

16. The Government does not see any sufficient reason for excluding Sundays, legal public holidays and Saturday afternoons from the reckoning of the duration of the holiday.

FINLAND

16. If the duration of the holiday is fixed at so many working days or complete weeks, as is suggested above, the exclusion referred to becomes superfluous.

HUNGARY

16. Sundays and legal public holidays should be excluded from the reckoning of the duration of the holiday, if the worker is not ordinarily engaged on these days. If, on the other hand, the employee is required to be at work on these days, then that fact also should be taken into account. In any case, Saturday afternoons should not be excluded from the reckoning.

INDIA

16. The weekly rest-day should be excluded. Sunday should not be excluded where it is not the weekly rest-day.

'IRAQ

16. See the reply to Question 4 above.

ITALY

16. Sundays, legal public holidays and Saturdays afternoons should be excluded from the reckoning of the duration of the holidays.

LUXEMBURG

16. Sundays and legal public holidays should be excluded from the reckoning of the duration of the holiday.

THE NETHERLANDS

16. The reply is in the affirmative to (*a*), (*b*) and (*c*); however, it should be possible to depart from this system in the case of workers employed on continuous processes.

NORWAY

16. Sundays and legal public holidays should be excluded.

Poland

16. The reply is in the negative.

Portugal

16. Yes. Holidays with pay should be entirely distinct from the customary rest periods such as Sundays, weekly days of rest, public holidays or Saturday afternoons.

Spain

16. The reply is in the negative.

Sweden

16. (*a*) The question seems to be superfluous as only working days are taken into consideration in reckoning the duration of the holiday.

(*b*) See the preceding reply.

(*c*) The reply is in the negative.

Switzerland

16. (*a*), (*b*) and (*c*) Sundays and public holidays should be excluded in calculating the duration of the holidays; on the other hand, Saturdays should be considered as full working days. In this connection, the Government refers to the reply to Question 14.

Union of South Africa

16. The international regulations should aim at prescribing the minimum number of paid holidays, and all questions involving details of application should be left to the competent authorities in the States concerned. No provision should, therefore, be inserted on the subject of excluding Sundays or public holidays from the holiday period.

United States of America

16. Yes. If the week's vacation is not continuous, the employee should be granted as vacation the number of days customarily worked in a week. (Under this arrangement an employer who gave his workers a vacation during a week which contained a legal holiday would have an advantage, but in the long run this would seem desirable as it would encourage continuous vacation periods.)

Yugoslavia

16. Sundays, legal public holidays and Saturday afternoons should be included in the reckoning of the holiday with pay.

17. (i) Do you consider that the international regulations should prescribe, having regard to the conditions in the different countries, the period of the year at which the holiday may be taken ?

(ii) If the reply is in the affirmative, what provisions in this respect do you suggest ?

18. (i) Do you consider that the international regulations should include provisions determining by whom, and in accordance with what procedure, the date of the holiday is to be fixed?

(ii) If the answer to (i) is in the affirmative, what provisions do you suggest ?

AUSTRIA

17. (i) The reply is in the negative.

18. (i) The reply is in the affirmative.

(ii) The date of the beginning of the holiday should be left to be determined by agreement between the employers and workers.

BELGIUM

17. (i) The Government considers that this question should be dealt with by national laws and regulations. International regulations cannot take into account differences of latitude and seasons and other requirements.

18. (i) The reply is in the affirmative.

(ii) It should be fixed by mutual agreement.

BRAZIL

17. (i) The reply is in the affirmative.

(ii) The holiday should be accorded within twelve months of the expiration of a period of the same length as that during which the worker acquired his right to this holiday.

18. (i) The reply is in the affirmative.

(ii) The date of the holiday should be fixed by the employer in accordance with the requirements of the service.

CHILE

17. (i) The reply is in the affirmative.

(ii) It should be prescribed that the holiday shall be granted, so far as the normal working of the undertaking permits, in spring or in summer.

18. (i) and (ii) Yes. The date of the holiday should be determined by the employer and approved by the competent authority for labour questions, who should consult beforehand the representatives of the workers concerned.

CHINA

17. (i) The reply is in the negative.

18. (i) The reply is in the negative.

CUBA

17. The employer should be left to determine the period on condition that he does not postpone the holiday more than six months.

18. See above reply.

DENMARK

17. It should be left to the competent authority in each country to fix the period of the year at which the holiday may be taken.

18. It should be stated in the Convention that it is left to the national laws and regulations to determine by whom, and in accordance with what procedure, the date of the holiday would be fixed.

Rules stating that it should be permissible for the workers to express their desires as to the date of the holiday, that, in this connection, seniority of service should be taken into consideration and that any differences should be settled by a supervisory body, should form the subject of a Recommendation.

ESTONIA

17. Having regard to the fact that climatic, social and other conditions differ widely in different countries, it is to be feared that it would not be possible to prescribe in the international regulations the period of the year at which the holiday should be taken. Moreover, it is difficult to see that the fixing of this period can be of any importance from the point of view of international relations. In the Government's view it should be left to the competent authorities in each country to fix the period in question.

18. No, the matter should be left to be dealt with by national laws or regulations.

FINLAND

17 and 18. The date of the holiday should be fixed by the employer, regard being had to the working conditions of the undertaking and to the interests of the workers. It might, however, be worth while in this connection to express the hope that holidays should be granted during the period of the year at which holidays are generally taken in accordance with the custom of the country.

HUNGARY

17. (i) No such provisions should be incorporated in international regulations.

18. (i) The reply is in the affirmative.

(ii) It would be necessary to adopt a provision empowering the employer to fix the date of the holiday. Before deciding, the employer should, however, hear the views of the beneficiary and sympathetically consider whether circumstances permit of his request being granted.

INDIA

17 and 18. These details should be left to the competent authorities in the countries concerned.

'IRAQ

17 and 18. Must be optional.

ITALY

17. The Government does not deem it advisable to prescribe in the international regulations the period of the year at which the holiday may be taken, as the technical requirements of the work and the diversity of conditions in various countries need to be taken into consideration.

18. For reasons already explained in the reply to the preceding question, the procedure for fixing the date of the holiday and the rules according to which it might be taken should be left to be laid down either in the national laws and regulations of each country or in collective agreements.

LUXEMBURG

17 and 18. It should be provided that the period of the year in respect of which the worker may apply for leave should be prescribed by the law, by collective contracts or in agreement with workers' representatives.

THE NETHERLANDS

17. In view of the great differences between industries, even within one country, it does not appear to be possible to lay down general rules concerning the period of the year at which the holiday should be taken.

18. The employer should be allowed to fix the date of the holiday.

NORWAY

17. The reply is in the negative.

18. The season should be prescribed in the national legislation, but the date of the individual holidays should be fixed by the employer.

POLAND

17. Yes ; the period should be required to be fixed by national laws and regulations.

18. Employed persons should be entitled to determine the order in which their holidays will be taken by agreement between themselves and with the management of the undertaking. If the parties concerned are unable to agree, the decision should be taken by the competent authority (e.g. the labour inspection service).

PORTUGAL

17. (i) No. In view of the difficulties to which the fixing of a definite date would give rise, the question of the period of the year during which holidays with pay may be given should form the subject of a supplementary Recommendation providing that holidays should be given during the period of the year when they would be most beneficial to the health of the worker (in Portugal, spring or summer).

18. (i) and (ii) See reply to Question 17.

SPAIN

17. The international regulations should not prescribe the period at which the holiday should be taken.

18. The international regulations should include provisions concerning the procedure for fixing the date of the holiday. Where there are collective agreements these should indicate the date of the holiday or the procedure for fixing it. If there are no such agreements it will be for the employer to fix the date of the holiday, arranging a fair rotation among his workers. In the event of disagreement between the employer and the worker, the dispute should be settled by the national body competent in matters of conciliation and arbitration.

SWEDEN

17. (i) In view of the diversity of the geographical and climatic conditions in the various countries which are Members of the Organisation, the question of adopting the provision referred to here had better be left to the national laws and regulations.

18. (i) The method of fixing the date of the holiday seems to be a question which might be left either to the national laws and regulations or to the parties to be settled by agreement.

SWITZERLAND

17. (i) and (ii) This point does not lend itself at all to international regulation.

18. (i) and (ii) This question should also be left to be dealt with by the national laws and regulations. The date of the holidays should be fixed as far as possible in agreement with the worker, while also taking into account, within reasonable limits, the interests of the undertaking. A number of establishments grant holidays by stopping work entirely for a week.

UNION OF SOUTH AFRICA

17. It would be most inadvisable to attempt to prescribe the period of the year at which holidays should be taken.

18. (i) The international regulations should not attempt to determine by whom the power of fixing the date of the holiday should be exercised, but it is necessary to fix the latest date on which the holiday is to be taken after qualification.

(ii) To meet the above suggestion, it is recommended that a provision be inserted in the Draft Convention to the effect that the holiday must be granted not later than three months after completion of the period of qualification.

UNITED STATES OF AMERICA

17. (i) No. The establishment should have the option of deciding as to the time of year.

18. (i) No. See reply to Question 17 (i).

YUGOSLAVIA

17. The Recommendation should not fix the period of the year at which holidays would have to be taken. In the Government's view this matter should be left to be dealt with by national laws and regulations, and the best arrangement would be to authorise the workers and employers to fix the date of the holiday by agreement between themselves, since it is they who are best acquainted with the conditions of work and the requirements of the undertaking.

18. The Recommendation should provide that the holiday must be taken in the course of each calendar year, and the carrying over of the holiday from one year to another should be forbidden. It follows that it should not be permissible to accept payment of wages, in addition to the ordinary wage, in substitution for the holiday, and that the holiday should in fact be taken.

CONTINUITY AND DIVISION OF HOLIDAYS

19. Do you consider that the international regulations should lay down the principle that as a general rule holidays should be continuous ?

20. (i) **Do you consider that, even if the general rule of continuity be laid down, the possibility of dividing holidays should be admitted ?**

(ii) **To what extent, and subject to what conditions, do you consider division should be allowed ?**

AUSTRIA

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) A division of the holiday should be allowed ; in smaller undertakings, i.e. those employing a small number of workers.

BELGIUM

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) Two periods as a maximum.

BRAZIL

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) As regards the undertakings listed in group (*a*) in the reply to Question 9 (ii), the holiday might, in exceptional cases alone, be divisible into two periods, one of which should not be less than seven days.

As for the undertakings included in group (*b*) in the same reply, the holiday might be accorded in parts of not less than five days.

CHILE

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) A division into two periods should be allowed only in the case of a holiday of at least fifteen days and upon the written request of the person concerned.

CHINA

19. The international regulations should lay down such a principle.

20. (i) The reply is in the affirmative.

(ii) The Government proposes to leave these questions to be determined by national legislation.

CUBA

19. Yes, the holiday should be continuous in order to achieve its purpose, which is both psychological and physiological.

20. (i) and (ii) Solely in the case where the return of the employed person is indispensable to the undertaking and if he is given the right to add the holiday which he has not been able to take to his next holiday.

DENMARK

19. The reply is in the affirmative.

20. It should not be permissible for the employer to divide the holidays except when unusual circumstances so require.

ESTONIA

19. The reply is in the affirmative.

20. The reply is in the negative.

FINLAND

19 and 20. As a general rule holidays should be continuous, and if the holiday is of the minimum duration there should be no departure from this rule. As regards holidays of longer duration given to intellectual workers, they should be continuous unless the nature of the work or other urgent circumstances require a different arrangement.

HUNGARY

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) If the holiday is not longer than a week, it would be desirable to make the division of the holiday permissible only at the request of the worker in accordance with his wishes. If, on the contrary, the holiday is longer than a week, it would be reasonable to envisage a solution meeting the wishes of the worker, as regards the first half of the holiday, and the employer's decision with regard to the latter half.

INDIA

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) It should be possible for a worker to take his holidays in not more than two instalments if he wishes to do so, and if the employer agrees. There should be no legal right to a division, but the possibility of a division should not be excluded.

'IRAQ

19. As a general rule, yes ; but it should not be compulsory.

20. (i) The reply is in the affirmative.

(ii) Optional.

ITALY

19. As a general rule, the international regulations should lay down the principle of continuity of holidays.

20. The regulations might also provide for the possibility of making exceptions to the general rule of continuity of holidays, but the rules relating thereto should be left to be laid down either in the national laws and regulations of each country or in collective agreements.

LUXEMBURG

19 and 20. It should be provided that the division of holidays should not be carried further than two approximately equal periods, unless the person entitled prefers to have it otherwise.

THE NETHERLANDS

19. The principle might be laid down that, as a general rule, a part of the holiday — for example, two-thirds — should be continuous.

20. See reply to Question 19.

NORWAY

19. The reply is in the affirmative.

20. Yes, after agreement between employers and workers and subject to the condition that the total duration of the holidays would be maintained.

POLAND

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) The Draft Convention should leave the question of the cases in which, and the conditions on which, the division of holidays may be permitted to be dealt with by national laws or regulations.

PORTUGAL

19. The reply is in the affirmative.

20. (i) The reply is in the negative.

SPAIN

19. The regulations should lay down the principle that as a general rule holidays should be continuous.

20. Only in exceptional cases, when the duration of the holiday exceeds the average, should the possibility of dividing holidays be admitted, and the division should be into two periods of which one would be at least equal to the average.

SWEDEN

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) It should be permissible for the national laws and regulations to provide for the division of the holiday in cases in which special circumstances would seem to make it desirable, provided that the object of the holiday, which is the recuperation of the worker, is not affected.

SWITZERLAND

19. Yes ; the holiday will serve its purpose only if it extends over a continuous series of days.

20. (i) and (ii) The division of the minimum duration of the holiday should be authorised only as an exceptional measure. It would be for the national laws and regulations to determine in what conditions and to what extent the holidays may be divided.

UNION OF SOUTH AFRICA

19. The Union Government considers that the time is not ripe for a general application of the rule that holidays should be continuous. This is, no doubt, the desideratum to be aimed at, but for the present States must be given discretion on the matter.

20. If a general rule of continuity be laid down, it is essential that Governments be given the power to permit the division of holidays in industries where the principle of continuity has not previously been applied, or where the period of holiday fixed by international regulation represents a substantial advance on existing conditions. By this means, it will be possible for such industries gradually to adapt their organisation to the new requirements.

UNITED STATES OF AMERICA

19. The reply is in the affirmative.

20. (i) Only if such division is requested by the employee and principle is approved by the competent authority.

YUGOSLAVIA

19. The annual holiday should be continuous.

20. (i) It would nevertheless be desirable to provide in certain cases for the possibility of dividing holidays (into not more than two parts).

(ii) If this is done, the determination of the length of the first part of the holiday should be a matter for national laws or regulations, unless it is left to be dealt with by agreement between the employers and workers.

PAY DURING THE HOLIDAY

21. Do you consider that the international regulations should prescribe that an employed person should receive his normal remuneration for the period during which he is on holiday ?

22. (i) Do you consider that the international regulations should lay down rules for the calculation of pay during holidays in the case of :

(*a*) persons paid by time ; and

(*b*) persons paid in whole or in part on an output or piece-work basis ?

(ii) If the reply to (i) is in the affirmative, please indicate what rules you propose for cases (*a*) and (*b*).

AUSTRIA

21. The reply is in the affirmative.

22. (i) Yes, in the case both of (*a*) and (*b*).

(ii) Case (*a*) : persons paid by time should receive their normal remuneration during the holidays.

Case (*b*) : in the case of persons paid on an output or piece-work basis, the remuneration to be paid during the holidays should be calculated on the basis of the average earnings for the twelve weeks preceding the holiday, leaving out of account only exceptional work.

In both cases, if the employed person does not continue to benefit by allowances in kind due to him under his contract, the cash equivalent for the holiday period should be paid to him in lieu thereof at the beginning of the holiday.

BELGIUM

21. The reply is in the affirmative.

22. (i) (*a*) The reply is in the negative.

(*b*) The reply is in the negative.

BRAZIL

21. Yes, in conformity with the reply to Question 4 (ii).

22. (i) (*a*) and (*b*) The reply is in the affirmative.

(ii) The payment should be equal to fifteen days' wages in the case of workers receiving a daily wage and a fortnight's salary in the case of those who are paid monthly ; and in reckoning this amount account should be taken of emoluments, salary, wages, commissions, percentages or gratuities.

When the work is done on a commission or percentage basis, the basis of calculation would be the daily average of the payments received by the worker during the twelve months of service giving him the right to holidays.

In the case of workers paid on a daily basis, the calculation would be based on the average of wages or gratuities received during the last six months of service giving the right to holidays.

In the case of persons paid on a contract or piece-work basis, the average of the payments received during the last six months of service giving the right to holidays would be the basis of calculation.

CHILE

21. The reply is in the affirmative.

22. (i) (*a*) and (*b*) The reply is in the affirmative.

(ii) When remuneration is at a fixed rate, the worker should receive during his holiday the same wage as he receives during the days when he works ; when the rate is variable, the payment during the holiday should be calculated in accordance with the average wage received during the same number of working days as are required to qualify for the holiday.

CHINA

21. The reply is in the affirmative.

22. The reply is in the negative.

CUBA

21. The reply is in the affirmative.

22. Yes. The employed person should be paid according to the length of his holiday ; that is to say, for seven or fourteen days, it should be calculated on the basis of his earnings over a period of six months or one year.

DENMARK

21. The reply is in the affirmative.

22. In the case of persons paid on piece rates, the wages should be calculated on the basis of the average for the previous year or, where necessary, for any shorter period during which the person concerned performed the work in question.

ESTONIA

21. The reply is in the affirmative.

22. No, these details do not appear susceptible of being dealt with in the international regulations. The matter is rather one for national laws or regulations.

FINLAND

21. The reply is in the affirmative.

22. In the case of persons paid in whole or in part at piece rates, the remuneration due for the holiday period should be calculated on the basis of their earnings prior to the holiday ; if it is not possible to apply this method such persons should receive remuneration equal to what would be received by a worker in a similar situation in the same country for similar work paid on a time basis.

HUNGARY

21. The reply is in the affirmative.

22. (i) Yes, and more particularly (*a*) in the case of persons paid by time as well as (*b*) in the case of persons paid in whole or in part on an output or piece-work basis.

(ii) As regards the case referred to in section (*a*) of paragraph (i), it would be desirable to lay down the rule that the worker shall receive for the period of his holiday the pay that he would have received had he remained at work as usual on the working days included in his holiday. This rule should state: (1) that a worker required to be at work on Sundays and legal public holidays should receive, in respect of the Sundays and legal public holidays covered by his holiday, the pay to which he would be entitled for these days had he been at work; (2) that a worker cannot claim any wages he might have received in respect of overtime had he remained at work during the period of the holiday.

In the case referred to in section (*b*) of paragraph (i), it would be desirable to lay down substantially the same principle as the one stated with reference to section (*a*). In this case also the consideration should be the payment due to the worker had he, during the period of his holiday, completed a piece of work, paid for on an output basis or at piece rates, having regard to the daily hours of work in respect of his employment.

If this question could be reasonably settled only on the basis of the average earnings calculated over a more or less extensive period, the worker should be paid at this rate in respect of his holiday.

India

21. The reply is in the affirmative.

22. No. These details should be left to the law and rules of the countries concerned.

'Iraq

21. The reply is in the affirmative.

22. The Government considers that such rules should be the function of the competent authority.

Italy

21 and 22. The Government considers it desirable that the international regulations should lay down the principle that the worker should receive his usual pay during his holiday and also the general lines on which this pay should be calculated.

Luxemburg

21 and 22. The provision in question is essential.

The Netherlands

21. The reply is in the affirmative.

22. The sum to be paid to the worker should be calculated according to the average of his earnings whether he be paid by time or on an output or piece-work basis.

NORWAY

21. The reply is in the affirmative.

22. (i) (*a*) and (*b*) Yes. In case (*a*) a direct calculation is proposed and in (*b*) the holiday pay should be calculated in proportion to the average earnings. If board forms a part of the wage, board wages should be granted.

POLAND

21. The reply is in the affirmative.

22. (i) The reply is in the affirmative.

(ii) (*a*) A person paid by time should receive for the period of his holiday the pay which he would have received if he had been working; (*b*) if an employed person is paid on an output or piece-work basis his remuneration for the period of his holiday should be calculated on the basis of his average earnings for a certain period preceding the holiday.

PORTUGAL

21. The reply is in the affirmative.

22. (i) The reply is in the affirmative.

(ii) The employee or worker should receive for each day of the paid holiday the wage which constitutes normally the payment for his daily work. If he works on contract or on a piece-work basis, the pay during the holiday should be calculated on the basis of the average remuneration received by an employee or worker for work paid by the day.

SPAIN

21. The reply must be in the affirmative, since this is the principle on which the Draft Convention is to be based.

22. The international regulations should not enter into these details, which must be left to be settled by national laws and regulations on the same conditions as similar questions.

SWEDEN

21. See the reply to the following question.

22. (i) (*a*) and (*b*) The reply is in the affirmative.

(ii) The wages of the worker while on holiday should, in the case of persons paid by time, be calculated according to the usual rules thereof. As for the persons referred to in Question 22 (i) (*b*), the stipulation might be made that to the extent to which payment by time is contemplated in their case, their wages during the holiday should be reckoned at least in accordance with the rules regarding such payment. Where there is no provision for payment by time, the remuneration in respect of the period of the holiday should be in accordance with the rules applicable to workers who might be assimilated with them.

The adoption of detailed provisions in this respect seems to be a question which might be left to the national laws and regulations.

SWITZERLAND

21. The reply is in the affirmative.

22. (i) and (ii) It should be sufficient to state in the international regulations the rule that the usual remuneration should be given, leaving the manner of calculating it to be fixed by the national laws and regulations.

UNION OF SOUTH AFRICA

21. The international regulations should prescribe that an employed person should receive not less than his normal remuneration for the period during which he is on holiday.

22. (i) (*a*) In the case of persons paid by time, it should be laid down that " normal remuneration " means the amount which would have been payable to the employed person in respect of the normal working hours of the establishment concerned.

(*b*) In regard to persons paid in whole or in part on an output or piece-work basis, " normal remuneration " should mean the amount which would have been payable to a time worker in respect of the normal working hours of the establishment concerned during the period in question. Where no time rates are applicable, the competent authority should be empowered to fix the basis of payment for holidays, subject to the limitation that the amount fixed should bear a reasonable relationship to the amounts normally earned by the workers concerned.

(ii) See above.

UNITED STATES OF AMERICA

21. The reply is in the affirmative.

22. (i) (*a*) and (*b*) The reply is in the affirmative.

(ii) Should be based on average weekly earnings during a determined period of recent date, as during preceding twelve months. This should be arrived at by dividing the total wages earned during such twelve months by the number of weeks the employee has been on the payroll.

YUGOSLAVIA

21 and 22. The Recommendation should contain a provision stipulating that the employed person should be entitled to the whole of his remuneration during his holiday. It should also be provided that if the employed person does not receive during the period of the holiday food which the employer is bound by agreement to provide, then the employer must make an equivalent payment in cash.

LOSS OF THE RIGHT TO HOLIDAYS

23. (i) Do you consider that the international regulations should include provisions laying down the conditions upon which the right to holidays would be lost ?

(ii) If so, what conditions do you suggest ?

AUSTRIA

23. (i) The reply is in the affirmative.

(ii) The right to a holiday should be lost if the employed person has himself given notice or has been dismissed for some grave reason.

BELGIUM

23. (i) The reply is in the affirmative.

(ii) Paid holidays should not be utilised for the purpose of working for another person either with or without remuneration. Any infringement of this provision should involve the loss of two days' holiday for each day of work done. Provision might be made for the total suppression of the holidays due for the following year in the event of a repetition of the infringement.

BRAZIL

23. (i) The reply is in the affirmative.

(ii) The holiday would not be granted :

(1) To wage earners working less than one hundred and fifty days during a period of twelve months;

(2) To workers attempting to place obstacles in the way of enforcing the regulations, in conjunction with their employers.

CHILE

23. (i) and (ii) An employed person who does not fulfil the conditions laid down by the regulations should lose the right to a holiday.

CHINA

23. (i) The international regulations should not include such provisions.

CUBA

23. (i) The reply is in the affirmative.

(ii) The reasons should be serious, such as sabotage, unlawful strike, theft, etc.

DENMARK

23. The question of laying down the conditions governing the loss of the right to holidays should be left to the national laws and regulations.

ESTONIA

23. No, the matter should be left to be dealt with by national laws or regulations.

FINLAND

23. The right to a holiday should be considered as having been definitely acquired when the worker has been in the service of the employer for the required period, even if he has not yet had time to take the holiday. If he should then lose his employment because he is discharged by the employer or because his contract has been terminated for reasons for which the worker is not responsible and which would be determined by the national laws or regulations, the worker's right to a holiday should be assured. If the holiday itself cannot be given in such cases, payment for the holiday period due should be given as compensation.

HUNGARY

23. (i) No. It would be desirable to leave to the national laws and regulations the question of defining the unusual cases in which the loss of the right to holidays would be involved.

INDIA

23. (i) The reply is in the affirmative.

(ii) The right to holidays with pay should be lost:

(*a*) By a worker who remains in the service of the same employer, in respect of any year, if he is absent without leave otherwise than on medical grounds. The right should be regained by a period of twelve months' uninterrupted service.

(*b*) By a worker whose service is terminated for due cause with effect from the date of termination.

'IRAQ

23. The Government considers that such rules should be the function of the competent authority.

ITALY

23. The international regulations might provide that the right to holidays with pay might be forfeited in the case of a worker whose contract is cancelled for some fault on his part.

LUXEMBURG

23. The forfeiture of the right to holidays should be limited to cases of unilateral repudiation of an engagement before going on holiday, either on the part of the worker or on that of the employer, in the absence of any cause justifying cancellation without notice.

THE NETHERLANDS

23. Provisions such as are indicated in this question are not considered desirable.

NORWAY

23. The reply is in the negative.

POLAND

23. The international regulations should provide that an employed person will lose his right to a holiday if he has himself terminated his contract of service or if the contract is terminated by the employer on grounds which entitle him to terminate the contract without notice by reason of fault on the part of the employed person.

PORTUGAL

23. (i) The reply is in the affirmative.

(ii) The Convention should include a provision purely and simply prohibiting an employee or worker from relinquishing his right to a paid holiday.

SPAIN

23. The only provision to be included in the international regulations should be that the right to holidays can be lost only as a penalty for serious fault. The settlement of details of application in cases where the facts can be regarded as constituting serious fault should be left to national laws and regulations.

SWEDEN

23. (i) No. The right to holidays should be guaranteed in the same way as the right to wages.

SWITZERLAND

23. The Government regards it as somewhat dangerous to include such a provision in the international regulations, for the door will thus be opened to abuses, in that employers would be enabled to suppress the holidays by way of sanctions or subject in some way the granting of holidays to the condition of the worker's conduct being satisfactory. It would, nevertheless, be advisable to provide that the right to a holiday or to payment in respect thereof should be lost in certain clearly defined conditions. By way of illustration, the Government cites the case of a worker accepting paid professional work during the holidays.

UNION OF SOUTH AFRICA

23. (i) It is considered that the international regulations should contain provisions in regard to the loss of the right to holidays.

(ii) The provisions suggested are :

(*a*) That the acceptance of paid work during the holiday period should involve loss of right to pay in respect of the holiday.

(*b*) That employees shall be entitled to a *pro rata* holiday period, or payment in lieu thereof, where they cease to be employed by any particular employer after having completed not less than one-quarter of the prescribed period of qualification.

This right should be preserved whether the employee resigns or is dismissed. Otherwise, the objects of the holiday system may be defeated by unscrupulous employers.

UNITED STATES OF AMERICA

23. (i) The right to holiday after the determined period of service should be a legal claim.

YUGOSLAVIA

23. The international regulations should define precisely the cases in which the employed person would lose his right to a holiday. In the Government's view, the right should be lost if the employed person has committed a serious fault, has himself broken his contract of service, or has left his employment without good cause.

It should also be provided in the Recommendation that the employed person would lose the right to his annual holiday in the following year if he is shown to have worked for payment during the course of his holiday — that is to say, if he has been employed by another employer or in another undertaking.

NULLIFICATION OF RELINQUISHMENT OF RIGHT TO HOLIDAYS

24. (i) Do you consider that the international regulations should contain any provision nullifying relinquishment of the right to holidays ?

(ii) If the reply to (i) is in the affirmative, what provision do you suggest ?

AUSTRIA

24. (i) The reply is in the affirmative.

(ii) The following provision is proposed : the contract of employment may neither nullify nor restrict the right to holidays.

BELGIUM

24. (i) The reply is in the affirmative.

(ii) The worker's right to a holiday should hold good notwithstanding any agreement to the contrary.

Brazil

24. (i) The reply is in the affirmative.

(ii) The Government considers that the formal relinquishment of the right to holidays by a worker should be prohibited, as holidays are provided in the interests of his health.

Chile

24. (i) The reply is in the affirmative.

(ii) The legislation of Chile contains a general provision stipulating that the rights conferred on employed persons by the Industrial Code and the regulations for its administration cannot be relinquished. A similar provision should be included in the Draft Convention.

China

24. (i) The reply is in the negative.

Cuba

24. (i) The reply is in the affirmative.

(ii) The regulations should contain a provision stating that " the right to a holiday cannot under any circumstances be relinquished ".

Denmark

24. It should be stated that the relinquishment of the holiday is permissible only exceptionally, and that violations of this rule are liable to be punished.

Estonia

24. The reply is in the affirmative.

Finland

24. See reply to Question 25.

Hungary

24. (i) Yes. The legislative authorities in each country should lay down the rule nullifying any relinquishment of the right to holidays and making the employment of a worker during his holiday an offence liable to be punished with a fine.

India

24. " Contracting out " should not be permitted; but an employee should have the right to postpone taking his holiday, by arrangement with his employer.

'Iraq

24. See the reply to Question 23.

Italy

24. The relinquishment of holidays should be made null and void as they are granted for purely social considerations.

Luxemburg

24. The principle of nullifying relinquishment of the holiday is right and proper.

It would be desirable to provide that " any written or tacit agreement between employers and workers calculated to detract from the benefit arising from the regulations in respect of holidays is prohibited and is null and void ".

The Netherlands

24. Any agreement for the relinquishment of the right to holidays should be declared null and void.

Norway

24. It should be laid down in the Convention that the worker cannot relinquish the minimum holiday prescribed in the Convention.

Poland

24. The reply is in the affirmative.

Portugal

24. (i) The reply is in the affirmative.

(ii) A pure and simple prohibition of the renunciation of a right to a paid holiday.

Spain

24. The reply is in the affirmative, as the worker should not be left free to accept or refuse at his own will the right to a holiday under conditions determined by the national laws and regulations in conformity with the Convention.

Sweden

24. (i) and (ii) The Convention should prohibit any agreement tending to the relinquishment of the right to holidays. It would, however, be desirable to approve of agreements providing for cumulation of holidays in respect of two or more years and other appropriate matters, provided that they do not affect the worker's right.

SWITZERLAND

24. (i) and (ii) Agreements concerning the relinquishment of the right to holidays should be null and void.

UNION OF SOUTH AFRICA

24. It does not appear to be necessary to include any provision on this subject.

UNITED STATES OF AMERICA

24. (i) Yes. The worker should not be able to relinquish his right to holiday, except in return for something equally valuable.

(ii) A definite provision that the right to holiday is equivalent to a legal claim.

YUGOSLAVIA

24. The Recommendation should contain a provision nullifying relinquishment of the right to a holiday with pay.

PROHIBITION OF FORGOING OF HOLIDAYS

25. (i) Do you consider that the international regulations should contain any provision to prohibit an employed person from forgoing holidays to which he is entitled ?

(ii) If the reply to (i) is in the affirmative, what provision do you suggest ?

AUSTRIA

25. (i) The reply is in the negative.

BELGIUM

25. (i) The reply is in the affirmative.

(ii) An employed person should be forbidden to forgo voluntarily the holiday to which he is entitled.

BRAZIL

25. (i) The reply is in the affirmative.

(ii) The Government considers that penalties should be provided for ensuring the observance of the regulations, without substantial prejudice, however, to the worker or to those depending on him.

CHILE

25. (i) The reply is in the affirmative.

(ii) The mere fact that an employed person has not taken his holiday should entail a penalty, and it should not be accepted as a valid excuse that he did not ask for it or that he received in its place compensation in money, except, however, when the person concerned, having fulfilled the conditions required to entitle him to a holiday, is dismissed without good reason.

CHINA

25. (i) and (ii) The international regulations should contain a provision prohibiting, in principle, an employed person from forgoing holidays to which he is entitled. But the competent authority in each country may enact legislation to determine under what conditions an employed person may choose to continue normal work during the holidays to which he is entitled, with extra pay.

CUBA

25. Yes. The provision suggested in the reply to the preceding question might be sufficient to prevent any relinquishment of the holiday. The following phrase might, however, be added: " and the beneficiary shall not resume his work before the expiry of the holiday, *nor accept other paid work* ". This last addition, which appears in the Cuban Act, strengthens the principle of the completion of the holiday and protects the unemployed.

DENMARK

25. It should be stated that the relinquishment of the holiday is permissible only exceptionally and that violations of this rule are liable to be punished.

ESTONIA

25. The reply is in the affirmative.

FINLAND

25. As indicated above, the purpose of the annual holiday is to give to workers an opportunity for rest, recreation and development, but experience in Finland, where legislation on this subject has been in force for twenty years, shows that it is not possible to exercise control over the employment of a worker during his holiday by another employer. This being the case, a practice has grown up in Finland under which it is not absolutely prohibited for a worker to go on working with the same employer. The worker's right to a holiday is thus a right either to the holiday or to the separate payment of corresponding compensation. In these conditions a worker might be forbidden to forgo his holiday and any renunciation of the right to the holiday might be declared null, as is the case in the Finnish legislation.

HUNGARY

25. (i) The reply is in the affirmative.

(ii) It is for the legislative authorities in each country to lay down the rule making the forgoing of holidays an offence and a worker guilty of it liable to be fined.

INDIA

25. See the reply to Question 24.

'IRAQ

25. The Government agrees to the principle that election by the employed person to forgo holidays should be prohibited.

ITALY

25. (i) In accordance with the reply to Question 24, the international regulations should contain a provision prohibiting any employed person from forgoing the holiday to which he is entitled or the corresponding pay.

(ii) The term "forgoing" should be taken to mean also the taking up, during the period of the holiday, of any kind of paid work outside the undertaking.

LUXEMBURG

25. There is no need to have any special provision in this respect.

The question of a provision prohibiting the beneficiary of the right to holidays from taking up paid work during the holiday should, however, be considered.

THE NETHERLANDS

25. Provision should also be made to prohibit all employed persons from forgoing the holidays to which they are entitled.

NORWAY

25. The reply is in the negative.

POLAND

25. The reply is in the affirmative.

PORTUGAL

25. (i) The reply is in the affirmative.

(ii) The principle of the obligation for the person interested to make use of his holiday should be adopted.

SPAIN

25. The reply is in the affirmative, in conformity with the previous reply.

SWEDEN

25. (i) The reply is in the negative.

SWITZERLAND

25. (i) and (ii) It would be contrary to the object pursued by those desirous of introducing holidays with pay for a worker to be able voluntarily to relinquish the holidays or to accept the payment of a sum equal to the wages falling due during that period. A cash indemnity should be allowed only where the right to holidays had not been exercised at the time of the termination of the contract of employment.

UNION OF SOUTH AFRICA

25. This question appears to be another method of expressing Question No. 24. No provision is considered necessary. See reply to Question No. 27.

UNITED STATES OF AMERICA

25. (i) Yes. See replies to Question 24 (i) and (ii).
(ii) See replies to Questions 25 (i) and 24 (i) and (ii).

YUGOSLAVIA

25. (No reply.)

MEASURES FOR ENFORCEMENT

26. Do you consider that the international regulations should provide that the enforcement of its provisions should be ensured by a system of inspection ?

27. Do you consider that the international regulations should require the establishment of a system of penalties for infringement of its provisions ?

28. Do you consider that every employer should be required to keep a record of the holidays of each worker and of the remuneration paid to him in respect thereof ?

29. What other provisions, if any, concerning enforcement do you consider should be included in the international regulations ?

AUSTRIA

26, 27 and 28. While the idea of ensuring the enforcement of these provisions by a system of inspection and of providing penalties for their infringement is readily comprehensible, an argument against it lies in the fact that the existing industrial services are

so engrossed with other tasks relating to the protection of workers and employees that effective supervision can scarcely be expected. Moreover the securing of evidence of an infringement of the provisions would necessitate exhaustive enquiries in each individual case into the conditions surrounding the right to a holiday (length of service, nature of employment, any suspension of the conditions of service, etc.); this would result in an excessive burden upon the administrative machinery. Another argument against a system of inspection and penalties is the fact that the employed person's right to a holiday can, in the case of its violation by the employer, be enforced by civil law in the same way as his other legal rights arising out of his contract of employment (his right to payment, etc.).

Should it be decided to make no provision for a system of inspection, there would be no necessity to require employers to keep the records referred to in Question 28.

29. The reply is in the negative.

Belgium

26. The reply is in the affirmative.

27. The reply is in the affirmative.

28. The reply is in the affirmative.

29. The reply is in the negative.

Brazil

26. Yes, it is in view of this that in Brazil factory inspectors are authorised by law to examine the books and index cards on which the holidays are entered.

27. Yes. In Brazil fines are imposed on employers infringing the provisions of the law.

28. Yes. In Brazil the law requires the employer to enter in a register or on an index card the holidays with pay and the dates on which they were granted.

29. Yes. It should be provided that an employer, who has not, within the prescribed period, accorded to his employee the holidays with pay to which the latter is entitled will be required to grant a holiday twice as long.

Chile

26, 27 and 28. The replies are in the affirmative.

29. The reply is in the negative.

China

26. The reply is in the affirmative.

27. The reply is in the affirmative.

28. The Government considers this to be necessary.

29. The Government does not propose any other provisions.

Cuba

26, 27 and 28. Yes. The provisions contemplated in the first two of these questions are contained in Act. No. 40. The provision contemplated in the third question will be covered by an Order.

29. A provision should be included prescribing the payment in advance of the remuneration for the period of the holiday.

Denmark

26, 27 and 28. The replies are in the affirmative.

29. The Government does not think that any other provisions should be included in the international regulations.

Estonia

26, 27 and 28. The replies are in the affirmative.

29. The reply is in the negative.

Finland

26, 27, 28 and 29. The replies are in the affirmative. Detailed provisions as to application might be made by the national laws or regulations of each country, so that it would be unnecessary to include such provisions in the international Convention though they might, if necessary, be included in the Recommendation.

Hungary

26. The reply is in the affirmative.

27. Yes. See the observations included in the replies to Questions 24 (i) and 25 (ii).

28. The keeping of such a record should be made obligatory only in the case of employers ordinarily employing more than five workers, as in the case of a smaller number of workers the facts could just as well be ascertained without a record.

29. The reply is in the negative.

India

26, 27 and 28. The replies are in the affirmative.

29. None.

'Iraq

26, 27 and 28. The replies are in the affirmative.

29. (No reply.)

ITALY

26 and 27. The international regulations might prescribe that the application of these provisions should be ensured by a system of inspection placed in charge of the competent Departments of each State and that a system of penalties for infringement should also be established.

28. It seems advisable to leave to the discretion of the law-making authorities in each country the question of either prescribing that the holidays granted and the remuneration paid by every employer should be recorded or of adopting other systems already practised in the different countries.

29. The question of adopting any other provisions, the need for which might eventually be felt, should be left to be dealt with in the national laws and regulations.

LUXEMBURG

26. The application of any provisions relating to the international regulations on holidays with pay should be subject to the supervision of a service of inspection.

27. The question concerns internal legislation.

28. The keeping of an *ad hoc* record is desirable.

29. (No reply.)

THE NETHERLANDS

26. It is desirable that the international regulations should provide for supervision by a system of inspection.

27. A system of penalties for infringement of the provisions laid down would be indispensable.

28. The obligation to keep a record such as is proposed here would seem to be useful.

29. The Government does not consider it necessary to suggest the inclusion in the international regulations of other provisions concerning enforcement.

NORWAY

26 and 27. The system of control should be left to national legislation.

28. The reply is in the affirmative.

29. The reply is in the negative.

POLAND

26, 27 and 28. The replies are in the affirmative.

29. (Nil.)

PORTUGAL

26. The reply is in the affirmative.

27. The measures for enforcement and the penalties to be established to ensure the granting of paid holidays should be left to the discretion of each State.

28. The reply is in the affirmative.

29. The reply is in the negative.

SPAIN

26. The inspection service should supervise the enforcement of the provisions of the Convention which would form part of the national labour legislation.

27. It is not necessary for the international Convention to deal with penalties. It would be sufficient to stipulate that any infringement of its provisions should be penalised in accordance with the general system prescribed by the national laws and regulations for contraventions of labour legislation.

28. As a matter of course each employer should have to keep a record of the holidays of each worker and the remuneration paid to him in respect thereof.

29. The reply is in the affirmative ; see the replies given to the various questions above.

SWEDEN

26. A special service of inspection does not seem to be necessary. The Labour Inspectorate might be entrusted with the supervision of the application of the provisions relating to holidays.

27. No. It would seem to be sufficient to require the employer to pay damages to the worker affected by the breach of the provisions relating to holidays.

28. The employer should be required to enter in a register particulars relating to holidays, in accordance with the rules laid down by the competent authority.

29. An eventuality not contemplated in the Questionnaire but one evidently frequently to be met with and which should therefore be referred to in the proposed regulations is the case of a worker leaving his employment before he had had his holiday. The Draft Convention should state that in such cases the worker would be entitled to the payment due for the duration of the holiday, irrespective of the reasons for which his service was terminated.

SWITZERLAND

26. The Government is of the opinion that it is necessary to provide for supervision. The enactment of detailed provisions should, however, be left to the national laws and regulations.

27. The international regulations should lay down the principle that penalties should be imposed for infringement. The nature of the penalties should be determined by the national laws and regulations.

28. The various States should be able to regulate the technical organisation of supervision as they think expedient.

29. The Government considers it advisable to include the following provisions in the international regulations:

(1) It should be formally laid down that legal provisions or agreements relating to holidays with pay, which are more favourable to the workers, would remain intact.

(2) Workers should be formally debarred from undertaking paid professional work for another employer during their holidays.

(3) It would seem to be necessary to contemplate the possibility of suppressing and of writing off the right to holidays. It should be suppressed, for example, when an establishment is closed for a certain time as a result of lack of work. It should be possible to write off partially or wholly the right to holidays when a worker has had to interrupt his work for a considerable time as a result of illness or of being on military service. In this instance also the details should be left to be dealt with by the national laws and regulations.

UNION OF SOUTH AFRICA

26. The international regulations should require States to take effective steps to ensure their enforcement. The existing machinery for enforcing prescribed conditions of employment will in many countries meet this requirement.

27. There should be an obligation on employers to grant paid holidays to their employees in terms of any provision made by the competent authorities in the States concerned in accordance with the Draft Convention. States should be required to establish a system of penalties for infringements. If existing penalties for contraventions of laws relating to minimum wages and conditions of employment are applicable, no special provision will be necessary.

28. The question of requiring employers to keep records of holidays should be left to the States concerned.

29. The Union Government does not consider it necessary to include any other provisions for enforcement.

UNITED STATES OF AMERICA

26. Not by a special inspection system. The holiday right should be in the same category as a wage claim and be similarly protected.

27. No. Should be treated the same as wage claims.

28. The reply is in the affirmative.

29. None.

YUGOSLAVIA

26, 27, 28 and 29. (No reply.)

APPENDIX

The replies of the following Governments were received by the Office when this Report was already in course of printing — too late, therefore, for account to be taken of them in the analysis of the replies which is made in the following chapter. It has, however, been found possible to reproduce the text of the replies here.

CANADA

Province of British Columbia

In view of the fact that the question of Dominion and Provincial jurisdiction is at present before the Supreme Court of Canada, the Government have deemed it advisable to refrain, meantime, from filling in the answers to this Questionnaire.

Province of Manitoba

1. The reply is in the affirmative.
2. The reply is in the affirmative.
3. (i) (*a*) The reply is in the affirmative.
(*b*) The reply is in the negative.
(*ii*) No. Leave details to each country because conditions vary.
4. (i) The reply is in the affirmative.
(ii) Statutory holidays — or annual vacation.
5. (*a*), (*b*), (*c*), (*d*) and (*e*) The reply is in the affirmative.
6. The Government does not know of any.
7. The Government does not know of any.
8. (i) The reply is in the negative.
9. (i) The reply is in the negative.
10. The reply is in the negative.
11. (i) The reply is in the negative.
12. (i) The reply is in the affirmative.
(ii) The reply is in the negative.
13. One year.
14. One week.

15. (i) The reply is in the affirmative.

(ii) One year — one week; two years — two weeks; after three years' service — three weeks' holiday.

16. (*a*), (*b*) and (*c*) The reply is in the affirmative.

17. (i) The reply is in the negative

18. (i) The reply is in the negative.

19. The reply is in the affirmative.

20. (i) The reply is in the affirmative.

(ii) Any emergency conditions.

21. The reply is in the affirmative.

22. (i) (*a*) and (*b*) The reply is in the negative.

23. (i) The reply is in the negative.

24. (i) The reply is in the negative.

25. (i) The reply is in the negative.

26. The reply is in the affirmative.

27. The reply is in the affirmative.

28. The reply is in the affirmative.

29. None.

Province of Saskatchewan

The only legislation in existence in Saskatchewan which deals with the subject of holidays with pay is to be found in the Orders of the Minimum Wage Board. This Board has ruled that where a weekly minimum wage has been established for the workers in any industry no deduction shall be made from the weekly wage because of a statutory holiday occurring within the week. A number of private firms have regulations providing for holidays with pay, but these regulations affect only the permanent employees of the firm.

Because of the highly seasonal nature of the industries within the Province and further because of the fact that the Province is largely agricultural, the Government is of the opinion that the question of holidays with pay is not a sufficiently important public question within the Province to warrant the Government announcing any policy with reference thereto.

Colombia

Act No. 10 of 1934 provides certain rules for the protection of salaried employees in private establishments, which may be summarised as follows:

"*Article 14.* — Salaried employees in private establishments shall be entitled to the following privileges and benefits:

"(*a*) A fortnight's holiday for each year of service, with pay at the ordinary rate. The date of the holiday shall be fixed by the employer;

" (*b*) Sickness benefit accorded for one hundred and twenty days at the following rates : two-thirds of the salary for the first sixty days of sickness ; half the salary for the following thirty days and a third of the salary for the remaining period ;

" (*c*) In case of discharge for reasons other than misconduct or non-observance of a contract duly made out, the person concerned shall be entitled to an indemnity equal to a month's salary for each year of service he has accomplished or accomplishes, and calculated in the same proportion for parts of a year. For the purposes of the present article, this calculation shall be based on the average of the salary of the employee for the three last years of his service and, if his service is less than three years in duration, the average of the salary for the entire period during which he has worked.

" *Subsection.* — The employee shall be entitled to an indemnity even if he leaves his service because the period of the contract of his engagement has expired, save, however, in case of refusal, at that time, of his employer's offer to renew the above contract on the same conditions ".

The following provisions apply to salaried employees in State service and to workmen in public services :

" *Article 3 of Act No. 86 of 1923.* — Every salaried employee in State service shall be entitled to a half of his monthly salary, up to a period of six months, when as a result of sickness, contracted while on duty or aggravated due to the performance of his duties, he is incapacitated for the discharge of his functions. The production of a medical certificate from two qualified doctors is indispensable in order to be able to draw this allowance. "

" *Article 1 of Act No. 48 of 1930.* — The allowance provided for the benefit of State employees by Article 3 of Act No. 86 of 1923 shall also be accorded to workers in official establishments in all cases in which they fulfil the conditions stated in the text in question. "

" *Article 2 of Act No. 72 of 1931.* — Every wage-earning or salaried employee in official establishments, departments or undertakings who has been continuously employed for one year shall be entitled to a fortnight's holiday with pay. The said leave shall be granted in rotation, in order to avoid the interruption of the proper working of the organisation concerned. "

CHAPTER II

ANALYSIS OF THE REPLIES OF THE GOVERNMENTS

I. — Form and Character of International Regulations

Questions 1 to 3 (Replies on pp. 9 to 17)

The first three questions in the Questionnaire invited Governments to express their views on the form and character to be given to the proposed international regulations. These questions referred to the following points : (1) Should a Draft Convention be adopted, or, failing that, a Recommendation ? (2) In the event of a Draft Convention being adopted, should it be limited to laying down the principle or should it include detailed provisions ? (3) In the event of the adoption of a Draft Convention limited to laying down the principle, would it be desirable to complete it by a Recommendation giving detailed provisions as to its application ?

As to the first point, two of the Governments that have replied to the question, those of Japan and the Netherlands, would seem to be opposed to any international regulations on the subject. The former states that the system of holidays with pay is rarely applied in Japan and that it would be difficult to introduce any rules dealing with the matter. [1] As for the Netherlands, while recognising the social value of a system of holidays with pay and the desirability of extending this practice, the Government considers that the present economic situation is too far from being satisfactory to enable a general introduction of holidays with pay to be considered, as it would impose fresh burdens on industry and would increase the cost of production. It replies, therefore, in the negative as regards the proposal to adopt a Recommendation as well as that concerning a Draft Convention. [2]

Four other States — Bulgaria, Great Britain, Switzerland and Yugoslavia — are opposed to the adoption of a Draft

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[1] The Japanese Government has consequently abstained from replying to the other questions.

[2] Notwithstanding its negative answer. this Government has thought fit to reply to the various points of the Questionnaire, making it clear, however, that its replies are not to be regarded as definite proposals because, even should a more satisfactory economic situation make it possible, at some time, to consider the introduction of international regulations on holidays with pay, there would be a risk of the present proposals being regarded as no longer appropriate. It is therefore subject to this reservation and as a matter of information only that the replies of the Netherlands Government to the various points in the Questionnaire are referred to in the following analysis.

Convention, but are in favour of a Recommendation. The Bulgarian Government has added no comments to its reply on this point and has refrained from suggesting, as regards the other questions, any provisions which, in its view, should be included in the proposed Recommendation. The British Government, while of opinion that holidays with pay should be provided wherever circumstances permit, does not consider it possible to adopt international regulations in the form of a Draft Convention in this matter ; in its view, the consideration which has so far been given to the problem has not taken into account the large proportion of workers who during the year work for different employers or are intermittently employed. This Government would, however, be prepared to support the adoption of a Recommendation calculated to encourage the extension of the provision of holidays with pay and further consideration of the problem but, as in the case of Bulgaria, no suggestions have been put forward as regards the provisions to be included in this Recommendation.

The Swiss Government emphasises the importance it attaches to the idea of annual holidays with pay, and points out that the system has already been adopted in the case of certain categories of workers, under Federal or Cantonal legislation, and that numerous contracts of employment likewise provide for such holidays. It is, however, of the opinion that the economic situation hardly makes it possible to adopt international regulations with a view to the general application of the principle, as it would involve an increase in the cost of production which would be felt particularly in countries with high wages, such as Switzerland, and would weaken their capacity for international competition. Hence, in its view, any attempt to adopt a Convention should be abandoned and a Recommendation should be regarded as sufficient. The Government of Yugoslavia, confines itself to stating its preference for a Recommendation without mentioning the reasons therefor. [1]

One other Government, that of India, considers a Recommendation preferable to a Draft Convention, but adds in the course of its reply that there would be fewer objections, in its view, to the adoption of a Convention laying down the principle accompanied by a Recommendation giving the details of application. [2] In explanation of this attitude it

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[1] The Swiss Government as well as the Yugoslav Government, having replied in detail to the various questions concerned, their replies will be analysed in the course of the present chapter, but it will be understood that in respect of each point they have in view the adoption of a Recommendation.

[2] The Government observes that its replies to the various points in the Questionnaire, which will be referred to below, express its general attitude on the problem and must not be regarded as exhaustive.

states that, while certain industrial establishments in India allow holidays with pay and the practice is virtually general in the State establishments, this principle, however sound in itself, is not capable of satisfactory general enforcement by legislative enactment and that any attempt to enforce a general system of holidays with pay in that country would meet with grave difficulties. The chief difficulty would be that workers in industrial centres are generally drawn from very remote areas ; a holiday would be of little value to them unless it made it possible for them to revisit their village but, in view of the distance, few could afford to make the journey. Hence the systems in force in State establishments are nearly all elastic, particularly in the sense that holidays can be allowed to accumulate for a certain number of years. A system of this kind could not, however, be imposed by law in any large number of establishments without extensive administrative machinery the cost of which might be disproportionate to the benefits received. The Government of India therefore considers that any legal system of holidays with pay would have to be of an experimental nature and could be only applied on a limited scale for some time to come.

All the other Governments that have given their views (Austria, Belgium, Brazil, Chile, China, Cuba, Denmark, Spain, Estonia, Finland, Hungary, 'Iraq, Irish Free State, Italy, Luxemburg, Norway, Poland, Portugal, Sweden, the Union of South Africa and the United States of America) are in favour of the adoption of a Convention. It should, however, be noted that the majority of these Governments observe, in reply to Question 2, that should it not be found possible to adopt a Convention, the Conference should adopt a Recommendation.

As to the question of the character to be given to the Draft Convention, six countries (Austria, Belgium, Brazil, Chile, Cuba and Poland) are in favour of detailed regulations. The Government of Chile is, however, of the opinion that certain questions should be reserved for the Recommendation, and the Government of Cuba mentions a limited number of points on which the regulations should contain detailed provisions, while the Polish Government suggests that the Convention should not be of a merely declaratory character but should regulate all the important aspects of the problem.

On the other hand, fourteen States (China, Denmark, Spain, Estonia, Finland, Hungary, 'Iraq, Italy, Luxemburg, Norway, Portugal, Sweden, the Union of South Africa and the United States of America) are in favour of regulations laying down the principle or limited to the essential points. The Government of the Union of South Africa suggests that the Draft Convention should provide for two methods of dealing with the matter : (1) direct legislation or regulation

by the competent authority ; (2) fixing annual paid holidays in industries and occupations or for groups and classes of employees not covered by direct legislation or regulation, by the maintenance of machinery similar to that for which provision is made in the Draft Convention of 1928 concerning the creation of minimum wage fixing machinery.

In addition to these fourteen States, the Government of India, while stating, as has been pointed out above, that it is not in favour of any Draft Convention, observes that a Convention affirming the principle would be open to less objection.

The last question addressed to the Governments in this part of the Questionnaire was intended to ascertain whether, in their view, in the event of a Draft Convention laying down the principle being adopted, it should be completed by a Recommendation giving detailed provisions as to its application. All the Governments that have expressed an opinion on this point have replied in the affirmative.

As the preceding brief analysis will show, there is a considerable majority, among the Governments that have replied to the Questionnaire, in favour of the adoption of a Draft Convention laying down the essential principles concerned and a Recommendation giving, in greater detail, the methods of applying these principles.

II. — Definition of Holidays with Pay

Question 4 (Replies on pp. 17 to 21)

Question 4 invited Governments to express their views as to whether the international regulations should include a definition of the expression " holidays with pay " and, if so, to suggest a definition or the criteria for such a definition.

As to the desirability of defining the term " holidays with pay ", nine Governments (those of Austria, Brazil, China, Cuba, Hungary, Norway, Portugal, Switzerland and Yugoslavia) have replied in the affirmative. The definition or the criteria they suggest are rather varied. The Austrian Government's proposal is : " By holidays with pay is meant the annual liberation of an employed person, for the purpose of mental and physical recreation, from the obligation to work during a previously specified number of consecutive days which are not sick or convalescent leave, the contract of employment being maintained and the usual earnings being paid in full. " Holidays with pay, according to the Brazilian Government, should be defined as a period of rest during which the employed person concerned retains in full his right to his emoluments, salary, wages, percentages, commissions or gratuities. The Chinese Government suggests the following criteria : holidays

other than public holidays and days of sickness or convalescence; a number of consecutive days during which each employed person who has fulfilled certain conditions of service determined in advance ceases work every year; the length of the holiday to be determined in advance; and the payment of his normal remuneration to the employee for the period of the holiday. The Government of Cuba is of opinion that it should be sufficient to state that " employed persons who have given their services to an employer for one year are entitled to a holiday with pay ". The Hungarian Government's proposal is: " Holidays with pay are a specified period of rest accorded by an employer to a worker in his employment after a minimum period of service while continuing the employment; the worker must not take up any paid work during the holiday, but receives his usual remuneration. " The Norwegian Government considers that the term " 'holidays with pay' means a continuous rest interval of a certain duration during which the worker gets the wage which he would have earned in ordinary working hours ". The Government of Portugal observes that holidays with pay should mean the extension to all employees or workers with uninterrupted service of the application of the traditional principle of paid holidays. The definition suggested by the Swiss Government is " a previously determined number of free days following each other without interruption, which the employer is required to accord to the worker while paying him his usual wages ". The Government of Yugoslavia is of opinion that the definition should cover " a fixed number of days to be determined in advance, during which workers and employees fulfilling certain conditions of service would be entitled each year to cease work while continuing to receive, throughout the period, the whole of their remuneration ". This Government considers that it goes without saying that the time during which workers and employees have been prevented from working as a result of illness or accident should not be included in reckoning the annual holiday. The criteria that it suggests are: fulfilment of certain conditions by the workers and employees; determination in advance of the duration of the holiday with pay; and enjoyment of full remuneration during the holiday.

It should be added that, although refraining from suggesting the inclusion of a definition of holidays with pay in the international regulations, another Government, that of 'Iraq, observes that in the event of a definition being given, the following should be excluded from it: the normal weekly holidays, legal public holidays, religious holidays recognised by the State and days of absence from duty on account of sickness.

The fourteen other States that have replied to the question (Belgium, Chile, Denmark, Spain, Estonia, Finland, India,

Italy, Luxemburg, the Netherlands, Poland, Sweden, the Union of South Africa and the United States of America) are opposed to giving a definition of " holidays with pay " in the regulations, being generally of opinion that such a procedure would be attended with greater disadvantages than advantages, that it would meet with serious difficulties and that it would be unnecessary, as the meaning of the term in question would either be sufficiently clear in itself or would be sufficiently explicit from the general tenor of the provisions included in the regulations. The Finnish Government makes the suggestion that the preamble to the Convention might include a statement that the purpose of the holiday is to secure to the worker an opportunity for rest, recreation and the development of his faculties. The Government of Luxemburg is of opinion that the supplementary Recommendation should make it clear that customary holidays such as Christmas, New Year's Day or various other holidays and days of absence due to illness or domestic occurrences are not covered by the proposed regulations in so far as the workers retain their wages by virtue of the law, agreement or usage. Finally, the Swedish Government, while opposed to the adoption of a definition, considers that if any is deemed necessary, it should provide that the holiday is annual and preferably continuous, that its object is to give the worker facilities for recuperation and that the beneficiary should retain his wages during the period of the holiday.

It will be seen that the majority of the Governments that have replied to the question are opposed to the inclusion of a definition of holidays with pay in the regulations. Further, the proposals put forward by the Governments favouring such a definition are so varied that, in any case, it would hardly be possible to draw any clear conclusion from them for the purposes of drafting a text.

III. — Scope of the Regulations

(a) *Classes of Undertakings or Establishments or Occupations covered*

Questions 5 to 7 (Replies on pp. 21 to 26)

This part of the Questionnaire was drawn up with a view to determining the scope of the proposed regulations.

For this purpose various classes of undertakings and establishments (industrial undertakings, commercial and office establishments, establishments for the treatment or care of the sick, infirm, destitute or mentally unfit ; hotels, restaurants, boarding-houses and similar establishments ; theatres and places of public amusement) were enumerated in Question 5,

and the Governments were asked to state whether, in their view, the regulations should apply to the persons employed in these undertakings or *establishments*.

Only one Government, that of India, is of the opinion that this list is far too wide to be included in a Convention considering that there is no legislation corresponding to the proposed regulations in a number of countries. In its view, the competent authority should have discretion to select the classes of industrial establishments and any persons to whom the regulations will apply. This Government, however, considers that if the list suggested is to be included in a Recommendation, then it is not unsuitable.

The Government of the Irish Free State was of opinion that no useful purpose would be served by answering in detail the various points of the Questionnaire, a Bill on conditions of employment, containing provisions on holidays with pay, not having yet been finally adopted at the time of its reply to the Questionnaire. This particular Bill is restricted in scope as compared with what is proposed in Question 5, as it does not cover mining and transport or commercial work, which includes, particularly, clerical work as well as the overseeing, directing and managing of industrial work, and excludes also the preparation of food in a hotel or restaurant. In the absence of a definite reply on the point, it is of course impossible to say whether this Government is in favour of giving the Draft Convention a more limited scope than that indicated in the question.

The Government of Yugoslavia, on the other hand, proposes a different list from the one mentioned in the Questionnaire, possibly more restrictive ; it proposes that the regulations should apply to industrial undertakings, commercial staffs and subordinate staff employed in the higher classes of work, the staff of banks and persons employed in insurance institutions, pharmacists' assistants, journalists, inland navigation employees, the staff of State transport undertakings and the staff of undertakings in the printing and kindred trades.

As against this, three countries (Portugal, Sweden and the Union of South Africa) seem to favour a wider range. The Portuguese Government suggests that the Convention should cover employees or workers with uninterrupted service in all undertakings belonging to every branch of economic activity. The Swedish Government's proposal is that a provision should be adopted drafted approximately as follows : " The present Convention applies to all workers who are engaged substantially in a full-time continuous employment throughout the year ; agricultural and maritime workers are, however, excluded from its scope. " The Government of the Union of South Africa considers that the Draft Convention should be capable of application to all occupations and industries. In

its view, however, the Convention should be given effect through the special machinery which it proposes and which has been mentioned above, the Draft Convention itself setting out the principles to be followed rather than laying down a set of precise rules applicable automatically to a number of stated occupations or industries.

The nineteen other countries that have expressed an opinion on this point (Austria, Belgium, Brazil, Chile, China, Cuba, Denmark, Spain, Estonia, Finland, Hungary, 'Iraq, Italy, Luxemburg, Norway, the Netherlands, Poland, Switzerland and the United States of America) all agree that the scope of the regulations should be defined by means of the list of classes of undertakings and establishments given in Question 5. The only qualifications mentioned in their replies are the following. The Spanish Government suggests, and the Netherlands Government also alludes to this point, that so far as hotels, restaurants, etc., and theatres and places of public amusement are concerned, the regulations should apply only to persons whose work is of a continuous and permanent character. (It may be remarked at once that this condition would be satisfied if, as is suggested later in connection with Question 12, a minimum period of continuous service is required to acquire the right to holidays.) The United States Government desires that specific mention should be made of quarries and oil production, owing to a certain indefiniteness in American terminology. It suggests the following formula: " All establishments, including among them those engaged in mining, quarrying and oil production employing one or more persons other than those engaged in agriculture and domestic service. " The Italian Government considers that the international regulations should extend the benefit of holidays with pay to all workers engaged without interruption in the various undertakings enumerated. Finally, the Swiss Government observes that with so extensive a scope the regulations should be elastic enough to permit of application step by step, the different classes being distinguished according to their various requirements.

In Questions 6 and 7 the Governments were invited to state whether, in their view, the scope of the regulations should be extended so as to cover other undertakings or establishments than those mentioned in Question 5 and to classes of occupations not carried on in the undertakings and establishments to be enumerated.

A certain number of Governments have made proposals in this connection. These proposals are somewhat varied in scope and character, and it may be pointed out that, as will be evident from Chapter III, most of the categories suggested, already included by implication in the list given in Question 5, would be expressly covered by the more precise and detailed

text of the Draft Convention which the Office submits to the Conference. The Austrian Government considers that the scope of the regulations should include newspaper undertakings (in respect of editorial staff, reporters and all salaried employees and manual workers), domestic servants, hall-porters and private chauffeurs. The Brazilian Government is of opinion that the privilege of holidays with pay should be extended to employees in newspaper-publishing firms and in public services, whether these belong to the central Government, States, municipalities or are leased to concession-holders. The Polish Government proposes that the regulations should apply to the handling of goods at docks, quays, wharves and warehouses. The Yugoslav Government, which, as has been seen, suggests a different list from that in Question 5, particularly refers to pharmacists' assistants and journalists and is, moreover, of opinion that the question of extending the privilege of holidays with pay to persons employed in other branches of economic activity than those mentioned in its reply should be left to be dealt with by national legislation. Other countries propose that the scope of the regulations should be enlarged, more or less, by means of a general provision. The Government of Chile suggests the inclusion therein of all undertakings or establishments employing paid workers who do not rank as public officials, agriculture, maritime transport, domestic service and sea, river and lake fishing. The Government of 'Iraq considers that the principle should be applied to all workers who are in regular employment, and the Portuguese Government that the Convention should apply to all undertakings belonging to any branch of economic activity having employees or workers with uninterrupted service. The Swedish Government, as has been seen above, proposes a provision covering all workers who are substantially engaged in full-time and continuous occupation throughout the year, with the exception of agricultural and maritime workers.

It should, on the other hand, be noted that the Cuban Government is of opinion that the regulations should apply only to commercial and industrial undertakings, included in the list mentioned in Question 5, which employ more than a certain number of persons.

All the other Governments that have expressed their views in this matter (those of Belgium, China, Denmark, Spain, Estonia, Finland, Hungary, India, Italy, Luxemburg, Norway, the Netherlands, Switzerland, the Union of South Africa and the United States of America) agree that the scope should be defined by the list given in the Questionnaire. The Danish Government, however, observes that it might be desirable to keep to the classes enumerated in this list so that ratification may not be rendered difficult, although, in its view, all persons employed in any undertaking for

remuneration should be entitled to holidays. The United States Government, while of opinion that domestic service should, as a matter of justice, be covered by the Convention, recognises that such inclusion would be impracticable at the present time because of administrative difficulties. The Finnish Government also agrees to the scope proposed, but draws attention to the fact that the ground covered by the Finnish legislation on the subject is wider, as it applies to all persons working under a contract of employment. Finally, the Italian Government considers that it would be desirable to adopt separate regulations in respect of agricultural workers and seamen, excluded from the scope of the proposed Convention.

(b) *Classes of Persons to be excluded*

Question 8 (Replies on pp. 26 to 30)

Question 8 raises the question whether the competent authority should be given discretion to exclude certain classes of persons from the scope of the regulations and invites Governments to put forward their proposals in this respect, if any.

Nine Governments (those of Belgium, Chile, Cuba, Denmark Spain, Italy, Norway, the Netherlands and the United States of America) have replied to this question in the negative. The Spanish Government, however, agrees that the competent authority might be allowed to grant exemptions provisionally and in exceptional circumstances, but subject to prior consultation with qualified representatives of employers and workers and subject always to fair compensation being given. The Italian Government considers that, in exceptional cases and for reasons of public interest, it should be permissible for the competent authorities, after ascertaining the views of the organisations concerned, to suspend for a specified period the application of the national measures adopted for giving effect to the Convention.

The other States that have replied to the Questionnaire on this point have expressed themselves in the affirmative. Three of them (Estonia, India and Sweden) do not specify the classes to which such a provision should refer, but would seem to desire that in this respect the competent authority or national legislation should be entirely free. On the other hand, the Governments of Austria, Brazil, China, Finland, Hungary, 'Iraq, Luxemburg, Poland, Portugal, Switzerland and the Union of South Africa have put forward concrete proposals. Occasionally, these proposals tend to be very extensive, as those of the Portuguese Government which cover every branch of economic activity in all cases of pressing necessity or of public interest, or again, those of the South African

Government which would be applicable to every class of person. Several, on the contrary, refer to specially selected classes. The classes indicated are, in particular, civil servants and clerks in public services (China, Finland and Poland); manual workers and salaried employees in the post, telegraph and telephone services and the staffs of public transport services (Austria); persons having a share in the profits and those who are not required to keep regular hours or to work under orders, commercial travellers working on a commission basis or representatives not covered by a contract of employment strictly so called and not subject to the immediate supervision or control of other persons (Brazil, Finland and Switzerland). Other classes of workers mentioned in this connection are persons employed in undertakings in which only members of the employer's family are employed (Finland); assistants, other than apprentices, employed by artisans and petty tradesmen who do not ordinarily employ more than two workmen, with the express reservation that the exemption should not affect the position of apprentices (Hungary); persons who work entirely in an honorary capacity inspired by philanthropic or religious motives; and the staffs of industrial undertakings and of hotels, restaurants, etc., when their number does not exceed a specified average for the year (Luxemburg); casual workers ('Iraq and Switzerland) and persons occupying responsible positions of management (Finland).

It may be observed that some of these classes, such as casual workers, would be automatically excluded from the application of the regulations by the fact that continuity of service is made a condition of the right to a holiday. So far as the other classes are concerned, such as, for example, persons having a share in the profits and commercial travellers or agents, it would seem difficult to justify their exclusion on the ground that in their case there is no contract of employment properly so called, the exceptional feature of their employment being rather the provisions relating to remuneration in a contract of this kind. The only issue that, at the most, might be said to arise in this connection in respect of commercial travellers and agents is the method of calculating their remuneration during the period of the holiday. They are, it is true, among the exceptions mentioned in the 1930 Convention on the hours of work in commerce and offices; and their exclusion is appropriate in a Convention dealing with hours of work because the persons concerned carry out their work, as a rule, outside the establishments to which they belong and the exclusion applies to them only when this is this case. It does not seem possible to proceed on the same lines as regards holidays with pay, at any rate in the case of commercial travellers and agents who work exclusively for a

single employer, for to do so would be to treat them as if they were working on their own account. Similarly, while the 1930 Convention could legitimately permit the exemption of persons occupying positions of management or employed in a confidential capacity, because they are in an exceptional position as regards hours of work, the same reasons do not apply to holidays with pay. It would seem no less difficult to permit unconditionally the exclusion of workers employed in the post, telegraph and telephone services and the staffs of public transport services on the ground that, in certain countries, they are employed by the State or are assimilated in status to civil servants. In the case of the telephone service, for example, this would probably be true only of a minority of countries. Nor can it be maintained that the staffs of public transport services are everywhere governed by service regulations similar to those applying to civil servants. All that could be proposed would be to provide for the possibility of their being excluded when they really have the status of public officials. It has been previously pointed out that in this connection some countries have proposed that it should be open to the competent authority to exclude civil servants and, for reasons which will be explained in Chapter III, a provision of this kind could perhaps usefully be included in the Draft Convention. The Finnish Government's suggestion regarding the establishments in which only members of the employer's family are employed might also perhaps be adopted.

(c) *Distribution among Several Draft Conventions of the Various Classes of Establishments and Occupations referred to*

Question 9 (Replies on pp. 30 to 32)

In this question Governments were invited to state whether they considered that separate international regulations should be adopted for the various undertakings, establishments and occupations included in the scope of the proposed measures.

Only four Governments have replied to this question in the affirmative. These are the Governments of Austria, Brazil, Luxemburg and the Netherlands. The first suggests that industrial undertakings, commercial establishments and hotels, restaurants, etc., should be grouped together under the same regulations and that separate regulations should be adopted for establishments for the treatment of the sick, theatres and places of public amusement, newspaper undertakings, domestic servants, hall-porters in private houses and private chauffeurs. The Brazilian Government also favours classification by two categories — commercial and banking establishments and charity organisations, on the one hand, and, on the other, industrial undertakings, newspaper-publishing

concerns and transport and public services. The Government of Luxemburg desires separate regulations for railway workers and salaried employees with a view to safeguarding the appreciably higher standard of the existing working conditions of these classes, without prejudice to the rights of beneficiaries of special systems under the general law. The Netherlands Government declares that, for the moment, it has not sufficient information at its disposal to express an opinion as to the best method of distribution.

All the other Governments that have answered this question consider the distribution proposed in the question either undesirable or unnecessary (Belgium, Chile, China, Cuba, Denmark, Estonia, Finland, Hungary, India, 'Iraq, Italy, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the Union of South Africa and the United States of America). It should, however, be noted that the Swiss Government proposes that it should be open to the national legislation to take special steps in respect of the categories covered, where necessary, within the limits of the Convention.

To sum up, the majority of the Governments are in favour of defining the scope of the Convention by enumerating a series of classes of undertakings and establishments, the persons employed in which would be automatically covered by the provisions of the text; they approve of the list given in Question 5, subject to clearer definition or additions on certain points. The proposals put forward as regards permitting the exclusion of certain classes are somewhat varied. Among the suggestions receiving the widest support there are proposals for the exclusion of certain classes in whose cases exclusion would be difficult to justify, and it would seem that civil servants are the only class which could be considered in this connection in addition, perhaps, to persons employed in undertakings in which only members of the employer's family are employed. Finally, the great majority of the Governments are opposed to the distribution among several Draft Conventions of the various classes of establishments and occupations referred to.

IV. — Uniform or Diverse Systems

Questions 10 and 11 (Replies on pp. 33 to 38)

The first of these two questions raises the issue whether a single system of holidays with pay should or should not be prescribed for all classes of employed persons coming within the scope of the regulations.

Eleven Governments (those of Austria, Chile, Finland, Hungary, India, Italy, Luxemburg, Poland, Portugal, Switzerland and Yugoslavia) are opposed to a single system. The

proposals put forward by each of them are given below. The Austrian Government suggests the establishment of separate systems for manual workers and salaried employees, either by means of separate Draft Conventions (relating to industrial undertakings, commercial and office establishments and hotels, restaurants, etc.) or by means of two separate systems prescribed in the same Convention (applying to establishments for the treatment of the sick, etc., theatres and places of public amusement and newspaper undertakings), domestic servants, hall-porters in private houses and private chauffeurs, who are all manual workers, being covered by another Convention. The Government of Chile recommends three distinct systems, one for industrial workers, another for persons in domestic service and a third for private employees. The Finnish Government considers that a distinction should be made between manual and intellectual workers, the question of defining the line of separation between these two classes being left to be dealt with in the national legislation. The Hungarian Government calls attention to the existence of more favoured classes who have been getting holidays with pay for years even in countries in which the majority of the workers do not get them and is of opinion that the international regulations should take into consideration this factor as well as differences between the various categories concerning the duration of the holiday. The Government of India is of opinion that systems appropriate in one country and even one industry may be inappropriate in another and that, consequently, the international regulations should be very flexible and leave the national legislation entirely free to work out the application with reference to local conditions. The Italian Government proposes that a distinction should be made between workmen and salaried employees. The Government of Luxemburg considers that separate systems should be prescribed in respect of railway workers and salaried employees either in the same Draft Convention or by means of separate texts. The Polish Government's proposal is that three different systems should be contemplated, namely, for manual workers, for salaried employees, and for young persons of less than 18 years of age in whose case the holiday should be longer than that accorded to adults.. The Portuguese Government desires that it should be left to the discretion of each State to adopt the special systems that it may deem fit. The Swiss Government observes that, even if a uniform system is decided upon, the question of defining the distinction between salaried employees and workers should, nevertheless, be left to be dealt with in the national laws and regulations. Finally, the Yugoslav Government considers that, notwithstanding the advantages of a single system, it should be permissible to deal with the matter

differently for certain classes, particularly if the regulations are to apply to groups of employed persons who, in the Government's view, should not for the time being be included within their scope, such as, for example, apprentices, domestic servants, craftsmen, unskilled industrial workers not in permanent employment and agricultural workers.

The thirteen other Governments that have replied to this question (those of Belgium, Brazil, China, Cuba, Denmark, Estonia, 'Iraq, Norway, the Netherlands, Spain, Sweden, the Union of South Africa and the United States of America) either favour a single system or are not opposed to it. The Danish Government, however, makes a reservation — in its view, the competent authority in each country should be in a position to grant exemptions where special circumstances justify it. The Netherlands Government also states that it does not object to a uniform system, but wishes to reserve its right to express its definite opinion on the subject later.

Question 11 was intended to elucidate a particular point referred to in the previous question, the Governments being consulted on the desirability of prescribing a special system in the case of apprentices. In the event of the reply being in the affirmative, they were invited to express their views on how apprentices should be defined and to put forward proposals concerning the special system to be prescribed in regard to them.

Seven Governments (those of Austria, Belgium, China, Hungary, Luxemburg, Spain, and Yugoslavia) are in favour of a special system in the case of apprentices. The Danish Government should also perhaps be included in this group; although in reply to the preceding question it states that it favours a uniform system, here it observes that a system of holidays with pay should likewise be prescribed in respect of apprentices. It has been pointed out that, in this Government's view, the competent authority should be in a position to grant exemptions when circumstances justify it, and apparently, therefore, the reference here is to the power of the competent authority to grant such exemptions. The Polish Government replies to the question in the negative, but observes that apprentices should benefit by the special scheme it has proposed for young persons below 18 years of age.

The only Governments making proposals for the definition of apprentices are those of Belgium and Hungary. The first suggests that " any person, male or female, who, after having completed compulsory school attendance, is employed in an industrial, commercial or other undertaking for the purpose of learning a specific trade " should be regarded as an apprentice. The Hungarian Government's definition of an apprentice is " an employee whom an employer has undertaken to train in a properly specified occupation or occupations during

a specified period, subject to specified conditions, and who, on his side, undertakes to work for his employer so long as is necessary for obtaining training in the occupation or occupations in question ".

On the other hand, the Austrian Government considers that an internationally applicable definition of this term would probably give rise to difficulties of interpretation. The Spanish Government is of opinion that this question as well as the other details of application should be left to be dealt with in the national laws and regulations, provided that the basic principle of the holiday is respected. The Government of Luxemburg refers only to all young persons below 18 years of age.

As for the system to be prescribed, the Austrian Government proposes that apprentices of less than 16 years of age should be allowed a holiday a week longer than that accorded in the case of other employed persons. The Belgian Government suggests a holiday of fourteen days from the first year of their employment. The Hungarian Government desires that a longer holiday should be provided in the case of apprentices than that accorded to adult workers belonging to the least-favoured class. The Government of Luxemburg recommends a minimum of seven days.

The fifteen other Governments that have replied to the Questionnaire on this point (Brazil, Chile, Cuba, Estonia, Finland, India, 'Iraq, Italy, Norway, the Netherlands, Portugal, Sweden, Switzerland, the Union of South Africa and the United States of America) are either opposed to a special system in the case of apprentices or consider it unnecessary. If, in the absence of definite proposals from the Government of the Irish Free State, regard is paid to the Bill to which reference has already been made, this Government should also be added to the list, since the provisions of this Bill apply to industrial work carried out not only for a salary or wages but also for the purpose of learning any trade or calling. The observations made by the Cuban and the Swiss Governments in their replies should likewise be taken note of. The former Government calls attention to the fact that, according to its national legislation, for purposes of the calculation of work done, only six or seven hours a day are required in the case of apprentices under 18 years of age. And the Swiss Government considers that the need for introducing special regulations in respect of young workers in general (workers and apprentices) with a minimum holiday of six working days, when they are under 18 years of age, might be examined.

In conclusion, it might be observed so far as this part of the analysis is concerned, that the majority of the Governments are in favour of a uniform system with provisions covering apprentices.

V. — Qualifying Conditions for Holidays

Questions 12 and 13 (Replies on pp. 39 to 44)

Question 12 refers to two points : (1) Should the right to holidays be acquired only after a minimum period of uninterrupted service with the same employer ? (2) Should the regulations include a definition of the term " uninterrupted service ", and, if so, what should that definition be ?

Nearly all the Governments that have expressed their views on the first point have replied in the affirmative. The Belgian and the Danish Governments are the only ones, in fact, to reply in the negative, the latter adding that, while holidays should, in principle, be accorded each year even in case of a change of service, the details relating to this subject should either be left to be dealt with in the national laws and regulations or, if need be, should form the subject of a Recommendation.

Nine Governments (those of Brazil, Cuba, Hungary, India, 'Iraq, Italy, Luxemburg, the Netherlands and Portugal) have replied in the affirmative on the second point. All of them, with the exception of the Netherlands Government, have suggested a definition. But the proposals they make differ widely : " service performed with the same employer during a period of twelve months " (Brazil) ; " service which is accomplished without any interruption other than those prescribed by law as regards the eight-hour day, Sunday rest, sickness, maternity, etc. " (Cuba) ; " a definition making it clear that minor absences due to illness, etc., should not be regarded as interrupting the continuity of service and also that workers discharged after a substantial part of their service year had been completed should be entitled to a proportionate payment in lieu of a paid vacation " (United States of America) ; " service should be regarded as continuous as long as it is not terminated or is only interrupted for a certain time by one of the contracting parties or by both of them as the case may be, the interruption of service not being regarded as affecting its continuity if such an interruption does not tend to terminate it definitely " (Hungary) ; " a period during which the worker had not absented himself from work except with permission or on medical grounds, absence due to sickness for a limited period, e.g. twenty-one days, not being counted as an interruption " (India) ; " an interpretation of the term in such a way that absence on account of sickness cannot be regarded as a break in the service " ('Iraq) ; " continuous service accomplished in the same undertaking even where this arises from several successive contracts " (Italy) ; " a minimum number of working days, in accordance with professional and local usage, the days of absence due to sickness, domestic occurrences and intermittent

unemployment or to *force majeure* of any other kind being assimilable to working days " (Luxemburg) ; " service which is required to be accomplished regularly and assiduously during the year " (Portugal).

It might be added in this connection that, according to the Bill to which the Government of the Irish Free State refers, service is not considered as interrupted in case of absence due to illness, the temporary cessation or temporary reduction of the weekly quantity of the work on which a worker is employed, or any other temporary cause not due to the act or default of the worker, provided that the worker immediately returns to employment with the same employer, that he is not employed in industrial work during the interruption and that the interruption does not exceed one month in duration.

The twelve other Governments (those of Austria, Belgium, Chile, China, Estonia, Finland, Norway, Poland, Spain, Sweden, Switzerland and the Union of South Africa) that have answered this question have replied in the negative. It should, however, be noted that the Government of Chile suggests a provision to the effect that when an undertaking or establishment changes its owner, the new employer shall take into account, for the purpose of the holiday, the period of service already spent with his predecessor. Further, the Spanish Government states that if it is deemed necessary to define continuous service, the definition should be limited to the continuity of legal relationship between the employer and worker irrespective of whether or not there is in fact a daily rendering of services. The Swiss Government, without proposing a definition, points out that it would be desirable to clear up the legal situation arising from a change in the ownership of a factory or works and examine the question of taking into the reckoning the service accomplished with the previous employer in such cases. Finally, the South African Government suggests that it should be made clear that the competent authority in each State is empowered to define the term " uninterrupted service " in such a way as to condone temporary breaks in service.

The object of Question 13 was to determine the minimum period of service qualifying for a holiday.

With the exceptions of the Cuban, Hungarian and Norwegian Governments, which suggest six months or twenty-six weeks, the Portuguese Government, which proposes a minimum of two years, and the Danish Government, which desires that this question should be left to be dealt with by the national laws and regulations, all the other Governments that have replied to this question (those of Austria, Belgium, Brazil, Chile, China, Estonia, Finland, India, 'Iraq, Italy, Luxemburg, the Netherlands, Poland, Spain, Sweden, Swit-

zerland, the Union of South Africa, the United States of America and Yugoslavia) agree that the minimum period of service required for acquiring the right to a holiday should be one year. The Austrian Government desires that this period should be reduced to six months in the case of salaried employees, while the Italian Government, on the contrary, proposes that it should be six months in the case of workmen. The Brazilian Government proposes a minimum of a hundred and fifty working days during a period of twelve months, in special cases. The Finnish Government calls attention to the fact that under Finnish legislation the right to holidays is acquired after six months' service, but that the application of this provision has given rise to some difficulties in practice. The Swedish Government proposes that the Draft Convention should stipulate, not the minimum period, but a maximum period of twelve months to which it would be open to the national laws and regulations to subject the right to holidays. The Yugoslav Government, as was seen above in connection with Question 10, considers that in the event of the Recommendation envisaged by it covering certain categories to which it refers and which, in its view, should not be included in the scope of the regulations, the minimum period of service required should be extended up to two or three years. As to the reckoning of the period in question, the Government of India desires that it should be calculated from the beginning of each quarter in the year, incomplete quarters being ignored, while the South African Government proposes that it should be expressed in terms of days or shifts worked (e.g. 312 working shifts), in order to meet the case of daily paid workers, who might sometimes miss a shift or two and who would run the risk of being deprived of the right to holidays on this account, their service being regarded as having been interrupted.

Finally, it should be noted that the Bill to which the Government of the Irish Free State refers in its reply prescribes 1,800 hours of continuous service with the same employer as the minimum period qualifying for holidays.

It is evident that, in their replies to this part of the Questionnaire, the Governments are almost unanimously of the opinion that the acquiring of the right to the holiday should be subject to a minimum period of continuous service with the same employer. A large minority of them are not apparently opposed to the inclusion of a definition of "continuous service" in the Draft Convention, but the rather varied proposals of the minority do not seem to have sufficient in common to furnish a definition which could be applied internationally. The anxiety of a number of Governments to ensure that certain circumstances, and in particular absence due to illness, should not be regarded as interrupting the

continuity of service, would seem, however, to be well-founded, and perhaps points to the desirability of having a Recommendation on this subject.

The suggestion made in the great majority of the replies as regards the minimum period of service to be required is one year.

VI. — Duration, Calculation and Date of the Holiday

Questions 14 to 18 (Replies on pp. 44 to 57)

The first of these questions deals with the minimum duration of the holiday corresponding to the minimum period of service.

The figures proposed are as follows : fourteen days (India); twelve days (Sweden) ; ten days ('Iraq) ; nine working days (Norway) ; seven days (Brazil), China, Cuba, Estonia and Spain) ; seven working days (Finland) ; six days (Belgium, the Netherlands and the Union of South Africa) ; six working days (Switzerland and Yugoslavia) ; six days combined with two Sundays (Denmark); four days (Luxemburg); three days immediately previous to or following the weekly day of rest or a public holiday (Portugal) ; and one week, i.e. the normal number of working days in a calendar week (United States of America). The Bill to which the Irish Free State refers prescribes six consecutive days.

Among the Governments favouring two separate systems, the Austrian Government proposes one week in the case of manual workers and two weeks in that of salaried employees ; the Government of Chile, seven working days in the case of workmen and fifteen working days in that of salaried employees and domestic servants ; the Italian Government, six days in the case of workmen and fifteen days in that of salaried employees ; and the Polish Government eight days in the case of workmen and fifteen days in that of salaried employees and young persons. The Hungarian Government suggests that three days should be the minimum duration of the holiday after twenty-six weeks of service in the case of the least-favoured class and that there should be a graduated increase so far as the higher categories are concerned, but does not propose any definite scale.

Question 15 invited the Governments to state whether, in their view, the duration of the holiday should increase as the length of the period of service increases, and, if so, to suggest a scale.

Five Governments (those of India, 'Iraq, Norway, the Union of South Africa and the United States of America) are not in favour of the inclusion in the Draft Convention of the principle that the length of the holiday should increase with

the length of service, nor is there any such provision in the Bill to which the Government of the Irish Free State refers.

The nineteen other Governments (those of Austria, Belgium, Brazil, Chile, China, Cuba, Denmark, Estonia, Finland, Hungary, Italy, Luxemburg, the Netherlands, Poland, Portugal, Sweden, Spain, Switzerland and Yugoslavia) that have expressed an opinion in this matter are in favour of an increase in the length of the holiday as the period of service increases.

Ten of these Governments (those of Chile, Denmark, Estonia, Hungary, Italy, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia) are either of the opinion that the rules for the application of this principle should be left to be dealt with by means of national laws and regulations, or abstain from making any specific proposals.

The suggestions offered by the remaining nine Governments in this connection are very varied. The Austrian Government refers to the Austrian legislation on the subject, which provides a week's holiday after a year's service and a fortnight after five years in the case of workmen, while according to salaried employees a fortnight's holiday after six months' service and three weeks after twenty-five years. The Belgian Government proposes the following scale: nine days after two to ten years of service, fifteen days after ten years, and twenty-one days after fifteen years. The Brazilian Government proposes a week's holiday after a period of service of one hundred and fifty to two hundred working days, eleven days after two hundred and one to two hundred and fifty days, and fifteen days for longer periods. The Chinese Government proposes a special holiday of seven days for all persons with more than one but less than three years' service, ten days for three to five years' service, fourteen days for five to ten years, and one additional day for each year there after up to a maximum of thirty days. The Cuban Government desires that a fortnight's holiday should be allowed after a year's service, a month after five years, a month and a half after ten years, two months after fifteen years and three months after twenty-five to thirty years. The Spanish Government favours an increase in the duration of the holiday with each period of two years' service up to a total of fifteen days a year. The Finnish Government calls attention to the legislation in Finland, which provides for seven days after six months' service, and suggests that, accordingly, a fortnight's holiday might be allowed after a year's service, three weeks after five years and four weeks after ten years. The Government of Luxemburg proposes five days after five years' service, a week after ten years and twelve days after twenty years; moreover, in its view, the minimum duration of the holiday under special systems should be at least ten

days after three years and twenty days after five years' service. Finally, the Polish Government is of opinion that after three years' service a fortnight's holiday should be accorded in the case of manual workers and a month's holiday for salaried employees.

Question 16 refers to the reckoning of the duration of the holiday and asked whether the following should be excluded: *(a)* Sundays; *(b)* legal public holidays; *(c)* Saturday afternoons.

Six Governments (those of Austria, Estonia, Poland, Spain, the Union of South Africa and Yugoslavia) either do not favour the exclusion of any of these three periods or propose that these details should be left to be dealt with in the national laws and regulations of each country.

Five Governments (those of Belgium, Italy, the Netherlands, Portugal and the United States of America) approve the exclusion of all three periods from the reckoning. The Netherlands Government, however, makes the reservation that it should be permissible not to apply this rule in the case of workers employed on continuous processes. The United States Government adds that if the week's holiday which it proposes is not continuous, the employed person should be granted as holidays the number of days customarily worked in a week.

Eight other Governments (those of Brazil, Chile, China, Cuba, Hungary, Luxemburg, Norway, and Sweden) are either of opinion that Sundays and public holidays should be excluded, but not Saturday afternoons, or do not express any views on the subject. The Hungarian Government further observes that Sundays and legal public holidays should be excluded only if the worker is ordinarily engaged on these days. The Government of the Irish Free State should also be included in this group, as its Bill on the subject provides for the exclusion of Sundays and legal public holidays in reckoning the length of the holiday. The Governments that are in favour of expressing the length of the holiday in terms of working days (those of Denmark, Finland and Sweden) are evidently of the opinion that Sundays and legal public holidays should be excluded from the reckoning, though in their case a special provision to that effect is superfluous.

Finally, the Government of India makes the reservation that Sunday should not be excluded where it is not the weekly rest-day. The Government of 'Iraq also calls attention to the need for taking into account in this connection not Sundays but the normal weekly day of rest.

The last two questions in this part of the Questionnaire (17 and 18) refer to the desirability of prescribing in the international regulations the period of the year at which

the holiday may be taken and to the possibility of adopting a provision stating by whom and in accordance with what procedure the date of the holiday is to be fixed.

Only two Governments have replied in the affirmative to the first question ; the Brazilian Government suggests that the holiday should be accorded within twelve months of the expiration of the qualifying period, and the Government of Chile is of opinion that it should be granted, so far as the normal working of the undertaking permits, in spring or in summer.

The Polish Government, although agreeing that a provision on this subject should be adopted, takes the view that the date of the holiday should be required to be fixed by the national laws and regulations.

The Portuguese Government, on the other hand, while opposed to the inclusion of a provision on this point in the Draft Convention, is of opinion that the supplementary Recommendation should state that the holidays should be accorded during the period of the year at which they would be most beneficial to the health of the worker, which in Portugal would be spring or summer.

All the other Governments that have expressed a view on this subject (those of Austria, Belgium, China, Cuba, Denmark, Estonia, Finland, Hungary, India, 'Iraq, Luxemburg, Norway, the Netherlands, Spain, Sweden, Switzerland, the Union of South Africa and the United States of America) are opposed to the inclusion of any such provision. They take the view that such details should be regulated by the competent authority or by collective agreements or by agreements between the parties concerned or by the employer, in view of the difficulty of framing any absolute rule capable of being applied internationally, on account of the differences in geographical, climatic, industrial and social conditions. Three of these Governments (those of Cuba, Finland and the United States of America) definitely suggest that the question of fixing the date of the holiday should be left to the discretion of the employer. Two of them propose, however, that this discretion should be limited to some extent. The Cuban Government desires that the employer should be required not to postpone the holiday more than six months, and the Finnish Government suggests that the hope might be expressed that the holiday should be granted during the period of the year at which holidays are generally taken according to the local custom. The South African Government is opposed to any attempt to prescribe in the regulations the period of the year at which holidays should be taken, but considers that it is necessary to provide that the holiday must be granted not later than three months after the completion of the qualifying period.

Finally, it may be noted that the Irish Free State Bill provides that the time at which the holiday is to be taken is to be selected by the employer, who is required to give at least one week's notice to the worker.

The Governments of China, Denmark, Estonia, India, 'Iraq, Italy, Sweden, Switzerland, the Union of South Africa and the United States of America have replied to Question 18 in the negative. The Danish Government desires that this question should be left to be dealt with in the national laws and regulations, and suggests the desirability of including in a Recommendation rules stating that it should be permissible for the workers to express their desires as to the date of the holiday, that seniority of service should, if necessary, be taken into consideration in this connection and that any differences should be settled by a supervisory body. The South African Government proposes that the only provision to be included should be to the effect that the holiday must be granted not later than three months after the completion of the qualifying period.

The Governments of Austria, Belgium, Brazil, Chile, Cuba, Hungary, Luxemburg, Norway, the Netherlands, Poland and Spain have replied in the affirmative. Their proposals are as follows : the fixing of the date of the holiday by agreement between the parties concerned (Austria, Belgium and Poland, the Polish Government adding that any differences between the parties should be settled by the competent authority — for example, the labour inspection service) ; the fixing of the date by the employer (Brazil, Chile, Cuba, Hungary, Norway and the Netherlands, the Chilean Government also proposing that the approval of the competent authority should be required, and the Hungarian Government that, before deciding, the employer should hear the views of the beneficiary and sympathetically consider whether circumstances permit of his request being granted) ; the fixing of the date or indication of the procedure for fixing it by collective agreements or, in default thereof, by the employer, provision being made for the settlement of disputes, if any, by the national body competent in matters of conciliation and arbitration (Spain) ; the fixing of the date of the holiday by law, by collective agreements or by agreement between the parties concerned (Luxemburg).

Finally, the Yugoslav Government desires that the Recommendation proposed by it should provide that the holiday must be taken in the course of each calendar year and that it cannot be carried over from one year to another.

To sum up, the analysis of the replies to this part of the Questionnaire shows that the majority of the Governments propose six or seven days as the minimum duration of the holiday. There is also a majority in favour of laying down

the principle that the duration of the holiday should increase as the length of the period of service increases, the details, however, being left to be dealt with by national laws and regulations. There is a similar majority in favour of the exclusion of Sundays and legal public holidays (but not Saturday afternoons) from the reckoning of the duration of the holiday. Nearly all the replies seem to be opposed to the inclusion of any provision in the regulations relating to the fixing of the date of the holiday. Finally, opinions are apparently a good deal more divided on the question of the procedure to be prescribed for fixing the date of the holiday. There is a small majority of replies in the affirmative, but the proposals put forward are varied. These proposals refer, for the most part, to the fixing of the date either by the employer or by means of agreement between the parties concerned, and it is perhaps questionable if the Governments that have made these suggestions would consider it quite indispensable to insist on prescribing a procedure which, in the absence of any specific provision, would be the usual method of dealing with the matter.

VII. — Continuity and Division of Holidays

Questions 19 and 20 (Replies on pp. 57 to 61)

The first of these questions is designed to ascertain whether the international regulations should lay down the principle that as a general rule holidays should be continuous. The purpose of the latter is to determine whether any provision might be made to permit division of the holiday even though the general rule of continuity be laid down, and, if so, to what extent and subject to what conditions division might be allowed.

The great majority of the Governments agree, in principle, to the general rule that holidays should be continuous. The only Governments that have not replied in the affirmative to Question 19 are those of Luxemburg, the Netherlands and the Union of South Africa. The Irish Free State Bill likewise fixes the duration of the holiday at six consecutive days and thus prescribes the rule of continuity.

In their replies to Question 20, however, most of the Governments recognise to a greater or less extent the possibility of dividing holidays, even though they are in favour of the principle that holidays should be continuous. The only Governments to oppose any such division categorically are those of Estonia and Portugal. All the other Governments that have replied to the Questionnaire are in favour of permitting division of holidays, although the conditions they suggest are rather varied. In the first place, the Governments of China, 'Iraq, Poland, Sweden and Switzerland are

either of opinion that the details of application of this principle should be left to be dealt with in the national legislation of each country or suggest that no unconditional rule on the subject should be laid down in the regulations. The Italian Government considers that the rules should be prescribed either by national laws or regulations or by collective agreements. The other replies contain a certain number of proposals, but for the most part they either suggest reservations or limit the possibility of dividing holidays to exceptional cases. The Austrian Government considers that division might be allowed in small undertakings employing only a few workers. The Brazilian Government suggests that, so far as workers employed in commercial undertakings are concerned, it should be permitted only in exceptional cases. The following Governments are of opinion that division should be permissible only in certain specified cases: the Government of Chile, in the case of a holiday of at least fifteen days and upon the written request of the person concerned; the Cuban Government, in the case where the return of the employed person is indispensable to the undertaking; the Danish Government, when unusual circumstances make it necessary; the Spanish Government, in exceptional cases when the duration of the holiday exceeds the average; and the United States Government, if it is requested by the person concerned and the principle is approved by the competent authority. The Hungarian Government proposes that if the holiday is not longer than a week, division should not be allowed except at the request of the worker; if, on the contrary, the holiday is longer than a week, it suggests that a reasonable course would be to meet the wishes of the worker as regards the first half of the holiday, and to give effect to the employer's decision with regard to the other half. The Netherlands Government considers that, in any case, a part of the holiday, for example, two-thirds, should be continuous. The Government of India takes the view that the regulations should not lay down any legal right to a division, but that the possibility thereof should not be excluded. All the Governments making suggestions as regards the extent to which division should be permissible are of opinion that no more than two periods should be allowed. The Governments of Belgium, Brazil, Chile, India, Luxemburg, Spain and Yugoslavia take this view.

Finally, the Finnish Government considers that when the holiday is of the minimum duration there should be no departure from the rule of continuity, but that holidays of longer duration in the case of intellectual workers should be continuous only to the extent to which the nature of the work or other urgent circumstances make this possible. The

South African Government, on the other hand, is not in favour of laying down the rule of continuity, but states that if such a provision is adopted, it is essential that Governments be given the power to permit the division of holidays in industries where the principle of continuity has not previously been applied, or where the period of holiday fixed by the international regulations represents a substantial advance on existing conditions.

It will be seen from the foregoing that the great majority of the Governments expressing views on this subject are in favour of the principle that, as a general rule, holidays should be continuous. They admit, however, the possibility of dividing holidays, although, it is true, with a number of reservations and subject, as a rule, to strict limitations. The proposals made as regards the conditions to be imposed on any division which might be permitted are, on the whole, rather varied in character and not easy to classify.

VIII. — Pay during the Holiday

Questions 21 and 22 (Replies on pp. 61 to 66)

The issue to be considered in this section and raised in Question 21 is whether the regulations should lay down the principle that the employed person shall be entitled to his normal remuneration during the period of his holiday. All the replies are in the affirmative on this point. The Irish Free State Bill also recognises this principle.

Question 22 is intended to ascertain whether the international regulations should lay down rules for the calculation of pay during holidays, and if the reply is in the affirmative, the Governments were invited to indicate the rules they propose for this purpose in the case of persons paid, in whole or in part, on an output or piece-work basis, as well as those paid by time.

Seven Governments (those of Belgium, China, Estonia, India, 'Iraq, Spain and Switzerland) have replied in the negative, being of the opinion that it is for the competent authority or national legislation to lay down these rules.

The Yugoslav Government suggests no rules as regards the method of calculating pay, but observes that the Recommendation proposed by it should contain a provision stating that if the employed person does not receive during the period of the holiday food which the employer is bound by agreement to provide, then the employer must make an equivalent payment in cash.

Fifteen Governments (those of Austria, Brazil, Chile, Cuba, Denmark, Finland, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Sweden, the Union of South Africa and the

United States of America) have replied in the affirmative and all of them, with the exception of the Italian Government, have made specific proposals. In view of the diversity of these proposals, it may be useful to cite them in full. The Austrian Government suggests that persons paid by time should receive their normal remuneration, and, in the case of those paid on an output or piece-work basis, the remuneration to be paid during the holidays should be calculated on the basis of the average earnings for the twelve weeks preceding the holiday, leaving out of account only exceptional work. In both cases, it considers that if the employed person does not continue to benefit by allowances in kind due to him under his contract, the cash equivalent for the holiday period should be paid to him in lieu thereof at the beginning of the holiday. The Brazilian Government proposes that the payment should be equal to fifteen days' wages in the case of workers receiving a daily wage and a fortnight's salary in the case of those who are paid monthly ; the calculation should be based on the average of wages or gratuities received during the last six months of the service giving the right to holidays and should include emoluments, salary, wages, commissions, percentages or gratuities. When the work is done on a commission or percentage basis, the basis of calculation should be the daily average of the payment received by the worker during the twelve months of service giving him the right to holidays. Finally, in the case of persons paid on a contract or piece-work basis, the average of payments received during the last six months of the service giving the right to holidays should be the basis of calculation. The Government of Chile proposes that when the remuneration is at a fixed rate, the worker should receive during his holiday the same wage as he receives during the days he works and that when the rate is variable, the payment during the holiday should be calculated in accordance with the average wage received during the same number of working days as are required to qualify for the holiday. The Cuban Government suggests that the rate of payment should be equal to the average of the earnings for six months or one year. The Danish Government proposes that in the case of persons paid on piece rates, the wages should be calculated on the basis of the average for the previous year or, where necessary, for any shorter period during which the person concerned performed the work qualifying him for holidays.

The United States Government proposes that the calculation of pay during holidays in the case of persons paid, in whole or in part, on an output or piece-work basis should be based on average weekly earnings during a determined period of recent date, e.g. twelve months ; this should be arrived at by dividing the total wages earned during such twelve months by the number of weeks the employee has been on the payroll.

According to the Finnish Government, in the case of persons paid in whole or in part by piece-work the remuneration due for the holiday period should be calculated on the basis of their earnings prior to the holidays, and, if it is not possible to apply this method, such persons should receive remuneration equal to what would be received by a worker in a similar situation for similar work paid on a time basis. The Hungarian Government proposes that a person paid by time shall receive for the period of his holiday the pay that he would have received had he remained at work as usual on the working days included in his holiday, excluding pay for any overtime he might have worked but including pay in respect of the Sundays and legal public holidays covered by his holiday if he would have been required to work on these days. It is suggested that the same system should be applied in the case of persons paid on an output or piece-work basis, account being taken of what would have been the payment due to the worker had he, during the period of his holiday, completed a piece of work, paid for on that basis, having regard to the daily hours of work in his employment. The Norwegian Government's proposal is that for persons paid on an output or piece-work basis the pay should be calculated in accordance with the average earnings, including board wages, if board forms part of the wage. The Netherlands Government considers that the sum to be paid to the worker should be calculated according to the average of his earnings whether he be paid by time or on an output or piece-work basis. The Polish Government states that a person paid by time should receive for the period of his holiday the pay which he would have received if he had been working and that if an employed person is paid on an output or piece-work basis his remuneration for the period of his holiday should be calculated on the basis of his average earnings for a certain period preceding the holiday. The Portuguese Government suggests that the employee or worker should receive for each day of the holiday the wage which constitutes the normal payment for his daily work, or, if he works on contract or a piece-work basis, the pay should be calculated on the basis of the average remuneration received by an employee or worker paid by the day. The Swedish Government states that the wages of the worker while on holiday should, in the case of persons paid by time, be calculated at the usual rate ; but in the case of persons paid on an output or piece-work basis, it proposes that their pay should be reckoned at time rates when such rates are applicable to them, and that when this is not the case their pay should be reckoned in accordance with the rates applicable to workers who might be assimilated with them. The Government also adds that the adoption of detailed provisions in this respect seems to be a question which might be left to the national laws and regulations. Finally, the

South African Government is of opinion that in the case of persons paid by time it should be laid down that " normal remuneration " means the amount which would have been payable to a time worker in respect of the normal working hours of the establishment concerned, and that in regard to persons paid in whole or in part on an output or piece-work basis " normal remuneration " should mean the amount which would have been payable to a time worker in respect of the normal working hours of the establishment concerned during the period of the holiday. Where no time rates are applicable, the competent authority should be empowered, according to this Government, to fix the basis of payment for holidays, subject to the limitation that the amount fixed should bear a reasonable relationship to the amounts normally earned by the workers concerned.

It will be evident from their replies that the Governments unanimously approve of the proposal to include a provision in the international regulations prescribing that an employed person should be entitled to his normal remuneration during the period of his holiday.

Apparently, a substantial minority of Governments also favours the laying down of rules for the calculation of this remuneration, but an analysis of their proposals shows that the rules suggested differ appreciably. The only point on which a number of replies seem to agree is that, in the case of workers paid on output or piece-work basis, the wages should be calculated on the basis of the average of the earnings for a certain period preceding the holiday ; but about the length of this period the replies either differ or are silent. It seems difficult, therefore, to draw any inference from them clear enough for the purpose of laying down a binding rule intended to be applied internationally.

IX. — Loss of the Right to Holidays

Question 23 (Replies on pp. 67 to 70)

Question 23 invited the Governments to state whether in their opinion the international regulations should include provisions laying down the conditions upon which the right to holidays would be lost and, if so, to suggest such conditions.

Nine Governments (those of China, Denmark, Estonia, Hungary, 'Iraq, the Netherlands, Norway, Sweden and the United States of America) are opposed to any such provision.

The Finnish Government deals with the inverse aspect of this question and refers to a case in which the right to holidays should not be lost. It considers that the right to a holiday should be considered as having been definitely acquired

when the worker has been in the service of the employer for the required period, even if he has not yet had time to take the holiday. If he should then lose his employment because he is discharged by the employer or because his contract has been terminated for reasons for which the worker is not responsible, the worker's right to a holiday should be assured, and if the holiday itself cannot be given in such cases, payment for the holiday period should be given as a compensation.

Although not replying in the negative, the Swiss Government regards the provision suggested in the question as somewhat dangerous owing to possible abuse, as employers would be enabled to suppress the holidays as a disciplinary measure. It suggests the adoption of a provision to the effect that the right to holidays should be lost in certain clearly defined conditions, as for example in the case of a worker accepting paid employment at his trade during the holidays.

The eleven other Governments (those of Austria, Belgium, Brazil, Cuba, India, Italy, Luxemburg, Poland, Spain, the Union of South Africa and Yugoslavia) that have given definite replies to Question 23 are in favour of the proposed provision and have suggested the conditions to be prescribed. Two of these suggestions appear in a number of replies, although otherwise they are rather varied. One of them is the acceptance of employment with another employer during the holiday. Paid work is what is generally referred to in this case; as stated above, the Swiss Government has called attention to it, and so have the South African and Yugoslav Governments. The Belgian Government observes, on the other hand, that paid holidays should not be utilised for the purpose of working for another person either with or without remuneration and suggests that any infringement of this rule should involve the loss of two days' holiday for each day of such work, with total suppression of the holidays for the following year as the penalty for a repetition of the offence. The other condition mentioned by a number of Governments is a grave fault on the part of the worker causing his dismissal. The Austrian Government, for example, refers to dismissal for "some grave reason" without any further explanation; the Spanish Government, to "serious fault", and suggests that the determination of cases where the facts can be regarded as constituting serious fault should be left to the national laws and regulations; the Italian Government, to the cancellation of the contract "for some fault" on the part of the worker; the Polish Government, to the termination of the contract without notice by the employer by reason of "fault" on the part of the employed person; and the Yugoslavian Government, to "a serious fault" committed by an employed person. As examples of "serious reasons" the Cuban Government mentions sabotage, unlawful strike and theft. A

number of Governments seem to consider it a grave fault on the part of the worker to leave his employment or to break his contract without good cause (Austria, Luxemburg, Poland and Yugoslavia) or even absence without leave otherwise than on medical grounds (India). The Brazilian Government mentions the case of a worker attempting to place obstacles in the way of enforcing the regulations in conjunction with his employer as one in which holidays should be withheld. The South African Government suggests that employees should be entitled to a *pro rata* holiday period, or payment in lieu thereof, where they cease to be employed by any particular employer after having completed not less than one quarter of the period of qualification, and observes that this right should be preserved whether the employee resigns or is dismissed, for otherwise the objects of the holiday system may be defeated by resorting to dismissals.

The preceding analysis will show that the replies are, on the whole, in favour of including a provision in the international regulations laying down the conditions upon which the right to holidays would be lost. Various suggestions, however, have been made as to the conditions to be prescribed, and the only two points on which the proposals furnish any clear indications are, in the first place, acceptance of other paid work during the holiday, and secondly, some act or serious fault on the part of the worker resulting in the termination of the contract of employment.

X. — Nullification of the Relinquishment of the Right to Holidays

Question 24 (Replies on pp. 70 to 73)

This question raises the issue of the nullification of any agreement by which a worker renounces his right to a holiday. It will be recalled that the point was added as a result of an amendment, proposed by the Workers' representatives on the Committee on holidays with pay of the Nineteenth Session of the Conference and adopted without opposition. The authors of the amendment recognised at the time that it implied that employed persons should not be allowed to accept paid employment during their holidays. The Governments were invited to express their views on the desirability of adopting a provision nullifying the relinquishment of the right to holidays and to state the provision they proposed, if any.

With the exception of the Chinese, 'Iraqi and South African Governments, all the Governments that have expressed their views in this matter (those of Austria, Belgium, Brazil, Chile, Cuba, Denmark, Estonia, Hungary, India, Italy, Luxemburg,

the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United States of America and Yugoslavia) have replied in the affirmative. The United States Government, however, adds that the worker should not be able to relinquish his right to holiday, except in return for something equally valuable. Some of these Governments have put forward suggestions regarding the proposed provision, but it seems unnecessary to examine them in detail as they all aim, in slightly different ways, at nullifying any agreement renouncing the right to holidays. It should, nevertheless, be noted that the Government of Luxemburg is of opinion that the provision should refer to tacit as well as written agreements and that the Governments of India and Sweden consider that a worker should be able to postpone or cumulate his holidays.

XI. — Prohibition of the Forgoing of Holidays

Question 25 (Replies on pp. 73 to 76)

The issue raised here is whether, in the opinion of the Governments, the international regulations should contain any provision to prohibit an employed person from forgoing holidays to which he is entitled and the form to be given to such a provision.

Five Governments (those of Austria, Luxemburg, Norway, Sweden and the Union of South Africa) have replied in the negative; the Government of Luxemburg, however, suggests that there is no need for any special provision of this kind but that the question of prohibiting an employed person from taking up paid work during his holiday should be considered.

The Finnish Government calls attention to the fact that owing to the difficulties involved in enforcing the rule laid down in Finnish legislation, prohibiting an employed person from accepting other paid work during his holiday, a practice has grown up under which it is not absolutely prohibited for a worker to go on working with the same employer. The worker's right to a holiday is thus a right either to the holiday or to the separate payment of a corresponding cash compensation, and it is suggested that a provision to this effect might be adopted in order to prohibit the forgoing of holidays.

The sixteen other Governments that have expressed a view in this matter (those of Belgium, Brazil, Chile, China, Cuba, Denmark, Estonia, Hungary, 'Iraq, Italy, the Netherlands, Poland, Portugal, Spain, Switzerland and the United States of America) have replied in the affirmative. The Danish Government, however, would allow the relinquishment of the holiday only exceptionally but otherwise violations of the rule should be liable to punishment. The Chinese and 'Iraqi Governments are both of the opinion

that the proposed provision should be confined to laying down the principle that no employed person is allowed to forgo holidays to which he is entitled, but the former proposes that it should be open to the competent authority in each country to enact legislation to determine under what conditions an employed person may continue normal work during the holidays to which he is entitled, with extra pay. The Swiss Government, on the other hand, considers that cash indemnity should be allowed only where the right to holidays had not been exercised at the time of the termination of the contract of employment.

The Governments have suggested the following drafts: "An employed person should be forbidden to forgo voluntarily the holiday to which he is entitled" (Belgium); "the beneficiary shall not resume his work before the expiry of the holiday, nor accept other paid work" (Cuba). According to the Portuguese Government, the proposed provision should rather lay down the principle that the person concerned is under an obligation to make use of his holiday. The Italian Government is of opinion that the term "forgoing" should be made to cover the taking up, during the period of the holiday, of any kind of paid work outside the undertaking. Finally, three Governments, those of Brazil, Chile and Hungary, seem to consider that the violation of the proposed rule should be made a penal offence. The Brazilian Government desires that penalties should be provided for ensuring the observance of the regulations, without substantial prejudice, however, to the worker or to those depending on him. The Government of Chile suggests that the mere fact that an employed person has not taken his holiday should entail a penalty, and that it should not be accepted as a valid excuse that he did not ask for it or that he received instead compensation in money, except, however, when the person concerned, having fulfilled the conditions required to entitle him to a holiday, is dismissed without good reason. The Hungarian Government proposes that the national laws and regulations in each country should lay down the rule making the forgoing of holidays by a worker an offence liable to be fined.

XII. — Measures for Enforcement

Questions 26 to 29 (Replies on pp. 76 to 82)

The first of these questions refers to the desirability of including a provision in the international regulations to the effect that the provisions thereof should be enforced by a system of inspection.

The Austrian and the Swedish Governments are the only two to have replied to this question in the negative. The former observes: The existing industrial services are so

engrossed with other tasks relating to the protection of workers and employees that effective supervision in respect of holidays with pay can scarcely be expected. Moreover, the securing of evidence of an infringement of the provisions would necessitate exhaustive enquiries in each individual case into a number of matters (length of service, nature of employment, etc.). Another argument against a system of inspection and penalties is the fact that the employed person's right to a holiday can, in the case of its violation by the employer, be enforced by civil law in the same way as his other legal rights arising out of his contract of employment (his right to payment, etc.).

All the other Governments that have expressed a view on the subject have replied in the affirmative (those of Belgium, Brazil, Chile, China, Cuba, Denmark, Estonia, Finland, Hungary, India, 'Iraq, Italy, Luxemburg, the Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, the Union of South Africa and the United States of America). A number of them are of opinion that the factory inspection service should exercise this supervision (Brazil, Spain and the Union of South Africa), while two Governments (Sweden and the United States of America) make it clear that they do not consider it necessary to require a special inspection service to be set up for the purpose. The Irish Free State Bill also provides that inspection is to be entrusted to the factory inspectors. Finally, the Swiss Government observes that it is necessary to provide for supervision, but that the enactment of detailed provisions should be left to the national laws and regulations.

Question 27 is intended to ascertain the views of the Governments as to whether the international regulations should require the establishment of a system of penalties for infringement of the provisions thereof.

Seven Governments (those of Austria, Luxemburg, Norway, Portugal, Spain, Sweden and the United States of America) have replied in the negative. The desire of the Spanish Government seems, however, to be to avoid the institution of a special system of sanctions ; it considers that it would be sufficient to stipulate that any infringement of the provisions should be penalised in accordance with the general system prescribed by the national laws and regulations for contraventions of labour legislation. The United States Government observes that the right to holidays should be in the same category as a wage claim and be similarly protected. The Portuguese Government considers that the measures for enforcement and the penalties to be established to ensure the granting of holidays with pay should be left to the discretion of each State. The Austrian Government's reply is based on the same grounds as those referred to in connection with the previous question. The Governments of Luxemburg and Norway are of opinion that

this is a matter which should be left to be dealt with in the national laws and regulations, and the Swedish Government deems it sufficient to require the employer to pay damages to the worker affected by the breach of the provisions relating to holidays.

The sixteen other Governments that have expressed their views on the subject (those of Belgium, Brazil, Chile, China, Cuba, Denmark, Estonia, Finland, Hungary, India, 'Iraq, Italy, the Netherlands, Poland, Switzerland and the Union of South Africa) have replied in the affirmative. The Finnish Government, however, points out that the question of laying down detailed rules as to application should be left to the national laws and regulations, so that it would not be necessary to include such provisions in the proposed Draft Convention; but it has no objection to their forming part, if necessary, of the supplementary Recommendation. The Swiss Government agrees that the international regulations should lay down the principle that penalties should be imposed for infringement, but holds that the nature of the penalties should be determined by the national laws and regulations. Finally, the South African Government also approves of the proposed provision, but observes that if the States apply to holidays with pay the existing penalties for contraventions of law relating to minimum wages and conditions of employment, no special provisions would then be necessary. The Irish Free State Bill provides that offences are punishable by fine.

In Question 28 the Governments were consulted as to the desirability of requiring every employer to keep a record of the holidays of each worker and of the remuneration paid to him in respect thereof.

With the exception of the Austrian, Italian, Swiss and the South African Governments, all the Governments that have replied to this question agree that the international regulations should require employers to keep such a record. The Hungarian Government, however, considers that the keeping of such a record should be made obligatory only in the case of employers ordinarily employing more than five workers.

Question 29, the last of this section, asked Governments whether any other provisions on this subject should be included in the international regulations.

Only four replies contain any such suggestions. These are reproduced here, although, for the most part, they are extraneous to the issue raised in the question, i.e. measures for the enforcement of the regulations.

The Brazilian Government suggests that it should be provided that an employer who has not, within the prescribed period, accorded to his employee the holidays with pay to which the latter is entitled should be required to grant a holiday twice as long.

The Cuban Government desires that a provision should be included prescribing the payment in advance of the remuneration for the period of the holiday.

The Swedish Government observes that an eventuality not contemplated in the Questionnaire but one evidently of frequent occurrence is that of a worker leaving his employment before he has had his holiday, and suggests that a provision should be included to the effect that the worker would then be entitled to the payment due for the duration of the holiday, irrespective of the reasons for which his service was terminated.

Finally, the Swiss Government makes the following observations : (1) It should be formally laid down that legal provisions or agreements relating to holidays with pay which are more favourable to the workers would remain intact. (2) Workers should be formally debarred from undertaking paid professional work for another employer during their holidays. (3) It would seem to be necessary to contemplate the possibility of suppressing and of writing off the right to holidays. It should be suppressed, for example, when an establishment is closed for a certain time as a result of lack of work. It should be possible to write off partially or wholly the right to holidays when a worker has had to interrupt his work for a considerable time as a result of illness or of military service. In this instance also the details should be left to be dealt with by the national laws and regulations.

To sum up, the analysis of the replies to this part of the Questionnaire shows that the great majority of the Governments approve of the proposals to secure the enforcement of the provisions of the international regulations by a system of inspection, by a system of penalties for infringement of the provisions, and by requiring every employer to keep a record of the holiday of each worker and of the remuneration paid to him in respect thereof.

CHAPTER III

CONCLUSIONS AND COMMENTARY UPON THE PROPOSED DRAFT CONVENTION AND DRAFT RECOMMENDATION

In the preceding chapter, the views expressed by the Governments that have replied to the Questionnaire were stated and compared in respect of each of its points. What are the conclusions to be drawn from this survey as the basis of the proposals that the Office is required to submit to the Conference ?

In the first place, as regards the form which the proposals should take, the great majority of the Governments have, in their replies, expressed themselves in favour of a Draft Convention limited to laying down the essential principles concerning holidays with pay and a supplementary Recommendation specifying some at least of the methods of application of the principle. This attitude is, no doubt, accounted for by the fact that the law concerning holidays with pay, or, where there is no legislation, the practice obtaining at present differs appreciably in the various countries as regards details of application. There is, therefore, a risk that international regulations which attempted to cover all the details of application would not keep close enough to these national laws or practices in matters of secondary importance and would thus lead to difficulties in respect of ratification.

There are, however, a certain number of principles bearing on the working of the system of annual holidays with pay which are recognised in the greater part of the national legislations and which should be laid down in any international regulations in order to bring about a minimum of uniformity. These principles deal, in particular, with the qualifying conditions for holidays, the duration of the holiday, the division or deferment of holidays, the progressive increase in the duration of the holiday according to length of service, the pay due in respect of the holiday, the relinquishment by the worker of the right to holidays or the forgoing of holidays by the beneficiary. There is no doubt that it would be indispensable to include in the Draft Convention an appropriate provision in respect of each of these principles. If the national regulations concerning holidays with pay, which can, of course, go into greater detail as regards the methods of application, conform to the general lines laid down in the international regulations, a sufficient measure of uniformity in the national systems would be secured.

The form and character to be given to the proposed international regulations having thus been determined, the Office was confronted with the following question. Should the Office submit its proposals, not as a single Draft Convention applicable to nearly all workers, whatever their occupation may be, but as two separate texts relating to salaried employees and manual workers respectively ?

Having regard solely to the reasons justifying holidays with pay, there would seem to be no need to make any distinction between the two categories of workers, for all the grounds on which the principle of holidays with pay is based are valid both in the case of salaried employees and in that of manual workers.

In practice, however, the general situation is as follows : salaried employees had been accorded holidays with pay long before manual workers ; the practice of granting annual holidays with pay is far more common in the case of salaried employees than in that of manual workers, even to the point of being almost general in a certain number of countries in which the benefit of holidays with pay has not yet been conferred on workers ; finally, the details of the system (qualifying conditions for holidays, duration of the holiday, progressive increase in the duration of the holiday, etc.) are often much more favourable to salaried employees than to manual workers.

At first sight, this situation might seem to justify the framing of two separate texts, one for manual workers and the other for salaried employees. Such a procedure would, of course, make it possible to have two sets of regulations suited to the present facts of the case in respect of each of the two categories of workers ; it would, moreover, facilitate the ratification of the Convention by countries in which at the present time only salaried employees are entitled to holidays or in which the system applicable to salaried employees is more favourable than that applicable to workmen. But, as has already been pointed out in Chapter II, there is a decisive reason against this solution, which is that the great majority of the replies are in favour of a single system for all categories of workers.

Moreover, apart from all other considerations, the framing of two separate Conventions applicable respectively to manual workers and to salaried employees would give rise to serious difficulties in drawing the line of demarcation separating one from the other. In fact, although the great majority of workers in commercial establishments could be included under the head of " salaried employees ", the same cannot be said of industry, where the same establishment may have two quite distinct kinds of wage earners, manual workers properly so called and salaried employees belonging to admi-

nistrative services. Further, some establishments are at the same time industrial and commercial in character, and in these any distinction between salaried employees and workers as regards the system of holidays with pay would give rise to all sorts of difficulties. It would also be difficult to distinguish between a salaried employee and a worker on the basis of the character of their work, for the conception of the functions of a salaried employee may vary considerably from one country to another. This problem arose in 1930 when the International Labour Conference was dealing with the regulation of the hours of work of salaried employees. Finding it impossible to frame a sufficiently precise and internationally applicable definition of the term "salaried employee", it came to the conclusion that the only effective solution was the adoption of regulations referring, not to salaried employees, but to commercial establishments and offices, i.e. establishments in which salaried employees are in a majority. Regulation on this basis was obviously open to the objection that it did not deal with salaried employees in industrial establishments, but this objection was largely met by the existence of the 1919 Convention concerning hours of work in industrial undertakings.

The framing of a single Convention, applicable both to industry and to commerce but with two different systems, one for salaried employees and the other for manual workers, would give rise to similar difficulties.

The best course would, therefore, seem to be to frame a single Convention applicable, without distinction, to manual workers and salaried employees in all the establishments covered and prescribing a single system of holidays.

It is obvious that if this course is followed the Draft Convention cannot provide for a system of holidays with the same conditions as would be prescribed if it were designed for application exclusively to salaried employees. Account must be taken of the actual situation as regards holidays with pay in most countries. As has already been mentioned, under the legislation in force in many countries the details of the holiday system, particularly as regards the length of the holiday, are more favourable in the case of salaried employees than in the case of manual workers, and, moreover, it must not be forgotten that in a certain number of countries the legislation still applies only to employees. In order, therefore, to make the Draft Convention acceptable to the greatest possible number of States, including those which have not yet enacted legislation on holidays with pay for manual workers, the system prescribed must necessarily be such that it can be applied simultaneously to both classes. This is, in fact, what seems to have been the intention of the majority of the Governments in proposing in their replies to the

Questionnaire that the Draft Convention should be confined to laying down essential principles. It is on this basis, therefore, that the Office has framed the draft which it submits to the Conference for consideration. It should, in addition, be noted that the system proposed would be only a minimum guaranteed by the international regulations, and that by virtue of paragraph 11 of Article 19 (405) of the Constitution, the adoption of such a Draft Convention by the Conference could not result in any diminution of the advantages already conferred by national legislation.

In accordance, also, with the indications given in the majority of the replies, the Office feels justified in submitting proposals for a supplementary Draft Recommendation dealing in greater detail with some of the rules relating to application.

In the following commentary on the two texts submitted for consideration, the proposed provisions will be briefly examined one by one and their purpose and the grounds on which they are based will be indicated.

Commentary on the Proposed Draft Convention

Article 1

1. This Convention applies to all persons employed in any of the following undertakings and establishments, whether public or private:

(*a*) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;

(*b*) undertakings engaged wholly or mainly in the construction, reconstruction, maintenance, repair, alteration or demolition of any one or more of the following:

buildings, railways, tramways, airports, harbours, docks, piers, works of protection against floods or coast erosion, canals, works for the purpose of inland, maritime or aerial navigation, roads, tunnels, bridges, viaducts, sewers, drains, wells, irrigation or drainage works, telecommunication installations, works for the production or distribution of electricity or gas, pipe-lines, waterworks,

and undertakings engaged in other similar work or in the preparation for or laying the foundation of any such work or structure;

(*c*) undertakings engaged in the transport of passengers or goods by road, rail, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;

(*d*) mines, quarries and other works for the extraction of minerals from the earth;

(*e*) commercial or trading establishments, including postal and telecommunication services;

(*f*) establishments and administrative services in which the persons employed are mainly engaged in office work;

(*g*) establishments for the treatment and care of the sick, infirm, destitute or mentally unfit;

(*h*) hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses;

(*i*) theatres and places of public amusement:

(*j*) mixed commercial and industrial establishments not falling wholly within any of the foregoing categories.

2. The competent authority in each country shall define the line which separates the undertakings and establishments specified in the preceding paragraph from those outside the scope of this Convention.

3. The competent authority in each country may exempt from the application of this Convention:

(*a*) persons employed in undertakings or establishments in which only members of the employer's family are employed;

(*b*) persons employed in public services whose conditions of service entitle them to an annual holiday with pay at least equal in duration to that prescribed by this Convention.

Article 1 deals with the scope of the proposed regulations. The first paragraph defines the scope by enumerating a series of undertakings and establishments, all the persons employed in which, whether manual workers or salaried employees, would automatically be brought within the scope of the Convention. This is the method suggested by the Questionnaire on the analogy of other Conventions previously adopted: that of 1919 on hours of work in industrial undertakings and that of 1930 on hours of work in commerce and offices. This method was approved by a large majority of the Governments that have communicated their views. It offers considerable advantages as regards the supervision to be exercised in order to ensure the enforcement of the regulations; moreover, as has already been pointed out, it avoids the difficulties, from an international point of view, involved in adopting the only other criterion possible, i.e. the nature of the occupation and the definition of the classes of employed persons to be covered on that basis.

The list of undertakings and establishments suggested in paragraph 1 is a combination of the lists in the 1919 and the 1930 Conventions and in the three Recommendations adopted at the same time as the latter. It includes all the activities covered by the general term, industrial and commercial activities, the only exclusions being agricultural and maritime employment and the work of domestic servants and home workers.

Two additions have had to be made to the list of industrial establishments adopted in 1919 in order to cover transport by air and broadcasting. As regards the latter, it has seemed convenient to group it with telegraphs and telephones in clause (*e*) of paragraph 1 by the use of the more comprehensive term "telecommunication services". In addition, the list mentioned in clause (*c*) of Article 1 of the 1919 Convention (construction, etc.), which has been reproduced in clause (*b*),

has been completed by the addition of airports and airway and telecommunication installations and pipe-lines. Finally, persons engaged in transport by hand, excluded from the Washington Convention, have also been brought within the scope of these proposals. This exclusion, justifiable when it was a question of fixing the daily and weekly limits of hours of work of persons whose employment is generally intermittent in character, becomes inappropriate in a Draft Convention concerning holidays with pay, inasmuch as one of the conditions to be fulfilled in order to acquire the right to the holiday is continuity of service, as will be seen when Article 2 is considered.

Paragraph 1 provides that the regulations shall apply to persons engaged in the undertakings and establishments enumerated therein, whether these be public or private. Public officials would therefore be included, in principle, within the scope of these regulations. But, as was seen in Chapter II, several Governments have in their replies suggested the exclusion of public officials. In framing these proposals, the Office has, therefore, considered it useful to permit the exemption, by national regulations, from the scope of the Draft Convention of persons employed in public services who are entitled to annual holidays with pay of at least the same duration as that provided for in the Convention (paragraph 3(*b*)).

There is another category in regard to which the proposed Draft Convention permits exemption from the scope of the international regulations by national legislation. These are establishments in which only members of the employer's family are employed (paragraph 3(*a*)). This provision does not seem to call for comment. There are several precedents for it in the International Labour Conventions previously adopted; it is justified by the difficulties involved in supervising the application to such establishments of the rules prescribed.

It may further be added that in order to avoid any difficulties concerning interpretation, a general provision has been incorporated in paragraph 2 of Article 2 leaving it to the competent authority in each country to define the line of demarcation between the establishments enumerated in the text and those which must be left outside the scope of the Draft Convention as being engaged in activities as to which it is not quite certain whether they are industrial or commercial in character but which might, for example, be more closely allied to agricultural or maritime activities.

ARTICLE 2

1. Every person to whom this Convention applies shall be entitled after one year of continuous service to an annual holiday with pay of a duration of at least six working days.

2. National laws or regulations may authorise in special circumstances the division of the annual holiday into parts or the carrying-over of the annual holiday to a subsequent year.

3. The duration of the annual holiday with pay shall increase with the length of service under conditions to be determined by national laws or regulations.

The principle of the right of an employed person to an annual holiday with pay is laid down in paragraph 1 of this article, which also specifies the only condition that it would seem proper to include in the international regulations, that relating to the period of service at the expiration of which the right to holidays is acquired. This period of service has been fixed at one year. This is the figure suggested, almost unanimously, in the replies; it should not give rise to any difficulties of application in view of the fact that, in the majority of national legislations, the period of service qualifying for holidays corresponds to this limit. The text prescribes one year of uninterrupted service without defining what is meant by this term, the majority of the Governments having shown themselves opposed to such a definition. The Questionnaire had added: " with the same employer ". The Office does not feel it necessary to leave this addition in the text, because, on the one hand, the idea seems to be implicit in the term " uninterrupted service " and, on the other hand, because there is the risk that the text might not cover the case of an establishment in which, in the course of the same year, a change of proprietorship takes place, although the workers employed in it continue to be employed without interruption throughout the period.

As to the principle that holidays should be continuous, the Office has deemed it preferable not to stress this in its text, since the Governments that have replied in favour of it have generally admitted elsewhere, although not, it is true, without some reservations, the possibility of division. The words " an annual holiday " seem, moreover, to indicate sufficiently that, in principle, the period should be continuous.

The duration of the holiday prescribed in paragraph 1 is at least six working days. As has already been stated, the international regulations could only prescribe a minimum. This is, moreover, the figure which seems to correspond to the desire of the majority of the Governments that have expressed an opinion on the subject. It is also the figure mentioned in many of the national regulations. Combined with one or two Sundays, according to when the holiday begins, six working days would be equivalent to a cessation of work for seven or eight days in all. The term " working days " was not used in the Questionnaire, where the same idea was conveyed in a rather more complicated way by the suggestion that Sundays and legal public holidays

should be excluded from the reckoning of the duration of the holidays. The Office has found it preferable to use the expression " working days ", which seems to it to be sufficiently clear in itself, in order to overcome the difficulties involved in the use of the wording suggested in the Questionnaire in countries where the customary weekly day of rest is not necessarily Sunday — a case referred to by the Government of India, as was seen in Chapter II.

Paragraph 2 of Article 2 empowers the national legislations to allow the division or carrying-over of holidays as an exceptional measure.

By prescribing that an employed person shall be entitled to " *an* annual holiday with pay ", paragraph 1 lays down the principle that holidays should be continuous. This continuity, which has been approved of in the great majority of the replies, is necessary if the holiday is to have the desired effects on the body and mind of the worker. Moreover, it is necessary to avoid any risk that, owing to the absence of a strict ruling on this point, the workers might be required to take their holiday in short instalments as a consequence of an incident or occurrence of some kind involving the closing of the establishment for a few days at a time. It is also necessary to exclude from the annual holiday to which an employed person is entitled the free days which an employer may grant to workers in his employment on account of such matters as domestic occurrences, private affairs, etc., while paying them their wages.

However, as has been pointed out, the majority of the Governments, while in favour of this rule of continuity of holidays, have in their replies to the Questionnaire expressed the opinion that it should not be absolutely binding. There are, in fact, cases in which, either for considerations of personal convenience or for other reasons, it may be to the advantage of the person concerned to allow the division of his holiday. But, as such cases are bound to be exceptional, it would clearly not be possible in the international regulations to go into details concerning the division of the holiday. It has, therefore, seemed preferable to empower the national legislations of the various countries to permit division, and to leave it to them to stipulate the conditions thereof, while specifying that this is a measure to be applied only exceptionally.

There was no reference in the Questionnaire to the carrying-over of holidays. The Office has, however, felt it necessary, in the interests of the workers, to include a provision with regard to this subject among its proposals. The reasons are as follows.

The object of holidays with pay is to secure a periodical rest for workers from their occupations, rest which seems to offer the maximum of benefit if it is taken systematically

every year. But, as the Government of India has pointed out in its reply, it may happen that in the larger countries where labour is often obtained from areas far removed from the industrial centres the greater part of the holiday would have to be spent in a long and costly journey, so that the beneficial effects of the holiday would be greatly reduced. The possibility of combining all or part of the holidays due for several years would, in such cases, enable the workers, although at longer intervals, to spend a sufficiently lengthy and recuperative holiday in their native place.

As this also is an exceptional case, it seems preferable to provide only that national regulations may authorise the carrying-over of holidays, and to leave to the regulations the framing of detailed rules and, in particular, the provision of adequate safeguards in the interests of the workers whose holidays would thus be deferred.

Paragraph 3 lays down the principle that there should be a progressive increase in the length of the holiday in proportion to the period of service. This is one of the fundamental principles of the system of holidays with pay and is recognised in the majority of national legislations. All the Governments, with very few exceptions, have expressed themselves in favour of this principle in their replies. But while the Governments have shown themselves to be almost unanimously in agreement on the principle, their suggestions as to its application are, on the contrary, very diverse. In fact, the national systems differ considerably as regards the criteria and conditions of the progression: age or length of service, the point at which the increase begins, the length of the holiday corresponding to each stage, the length of the interval between the steps in the scale, and the maximum duration of the holiday.

In these circumstances, the Office could do no more than propose to lay down in the Draft Convention the principle that there should be a progressive increase in the length of the holiday, while leaving the question of regulating the methods of application to national legislation.

However, even without specific regulations on all these points, there is one point which, in the interests of the workers, it would be well to settle, namely, the minimum duration of the holiday after a certain period of service. The latitude allowed to national legislation would then lie between two figures, a minimum number of days' holiday in respect of the minimum period of service and the minimum required after a specified period of service. As has already been pointed out, it has not seemed possible to prescribe in the Draft Convention any detailed rule of this kind and the Office has felt it necessary to reserve this point for the Recommendation.

ARTICLE 3

Every person taking a holiday in virtue of Article 2 of this Convention shall receive in respect of the full period of the holiday his usual remuneration calculated in a manner which shall be prescribed by national laws or regulations.

This article lays down the worker's right to his usual pay during the holiday. This is one of the fundamental considerations which is at the very root of the conception of holidays with pay, for these holidays should enable the worker, who very often lives from hand to mouth on his daily wage, to enjoy a rest in the certainty that his livelihood is assured. But while the principle that the worker should be entitled to his usual pay during the holiday should undoubtedly be laid down in the Draft Convention, the method of calculating this pay raises, on the other hand, a whole series of questions which would be difficult to deal with in international regulations. The calculation depends, in fact, on the form and nature of the remuneration which the worker receives. In inviting suggestions from the Governments on this point, a distinction was made in the Questionnaire between persons paid by time and those paid in whole or in part on an output or piece-work basis. The proposals made in the majority of the replies are very varied, as has been seen in Chapter II, and they give no sufficiently clear indication to enable the Office to propose more than the laying down in the Draft Convention of the principle that the worker should receive his usual pay during the holiday, leaving the question of framing the regulations relating to the methods of application to be dealt with by each country. At the most, the only point on which a number of replies seem to agree is the calculation of the pay, in the case of workers paid on an output or piece-work basis, on the basis of the average earnings for a certain period preceding the holiday, but it seems that a provision of this kind would be more appropriate in the Recommendation.

ARTICLE 4

Any agreement to relinquish the right to an annual holiday with pay or to forgo such a holiday, shall be void.

To the question whether the international regulations should contain provisions prohibiting the relinquishment of the right to holidays and the forgoing of holidays already due, the great majority of the Governments have replied in the affirmative. Both social considerations and considerations relating to the health of the worker evidently make it indispensable that it should not be open to him to relinquish his right to holidays or to forgo holidays to which he is entitled. The international regulations must, therefore, prohibit the

commutation of the right to holidays or of the holidays themselves for pecuniary considerations and any other similar transactions which, if they gained wide currency, would undoubtedly open the door to abuses of all kinds and lead to innumerable difficulties.

Article 4 therefore lays down that all agreements between an employer and a worker involving the relinquishment fo the right to an annual holiday with pay or the forgoing of the holiday shall be null and void.

ARTICLE 5

National laws or regulations may provide that a person to whom this Convention applies who engages in paid employment in his own trade or calling during the course of his annual holiday may be deprived either of his right to payment in respect of the period of the holiday or of his right *to an annual holiday with pay in the next subsequent year.*

This article deals with the one case in which a worker may be deprived of his right to an annual holiday with pay by national legislation. This is the case in which the person concerned engages in paid employment in his own trade or calling during the course of his holiday.

The Office has not thought it possible to go any further than this in the proposals it submits to the Conference. As has been seen in Chapter II, there is a majority of replies — though not, it is true, a very large one — in favour of including in the international regulations an article laying down the conditions in which the right to a holiday might be lost ; but as regards the conditions to be laid down the majority is divided, the proposals made being somewhat diverse in character. It was therefore necessary to select from among the various proposals those which seemed to be most widely supported and might therefore be included.

The reasons justifying deprivation of the holiday which are put forward in the greater number of the replies deal in effect with two principal cases ; the first of these is grave misdemeanour on the part of the employed person, under which heading a certain number of Governments appear to include the termination of the contract of employment without legitimate reason. The second case is that in which the employed person accepts paid employment for some other employer during his holiday.

As regards the first of these two cases, it will be recalled that the Committee of the Nineteenth Session of the Conference decided, after discussion of an amendment put forward by the Workers' representatives, to delete the phrase " serious fault " from the list of points given in the Grey Report. It may be presumed that the Committee in so doing was anxious to avoid deprivation of the right to a holiday being regarded as a

disciplinary penalty. Moreover, the expression "serious fault" is lacking in precision; reference to the replies of the Governments will show that these give to it divergent meanings. It would therefore be difficult for the international regulations to admit the possibility of a worker being deprived of his holiday in case of serious fault on his part while leaving complete latitude to national laws or regulations as regards the interpretation to be given to the term. There is also the further objection that some of the serious faults that might be imputed to the worker, such as sabotage, theft or other offences which have been mentioned in certain replies, might give rise to criminal proceedings, so that there would be a risk of a double penalty being inflicted for the same offence.

There would, on the other hand, seem to be good reason for dealing with the case in which an employed person undertakes paid employment in his own trade or calling during his holiday. Several Governments insisted on this in their replies and their reasons for doing so will be readily understood. The primary purpose of the paid holiday is to enable the worker to restore his physical strength and the object of the regulations would be defeated if, in a desire for gain, the worker were able to accept with impunity paid employment from some other employer during his holiday. It is indeed probable that the workers themselves would readily concede that their right to a holiday might be lost in such a case, since a considerable number of collective agreements already contain a provision to this effect.

This is therefore the only case with which the Office proposes to deal in the article concerning the conditions under which the right to a holiday may be lost. In the absence of a sufficient majority among the replies, it has not seemed possible to make the provision absolutely binding in character so that the loss of the right to the holiday would follow automatically whenever the condition laid down was fulfilled. It has seemed to the Office preferable to leave it to the national laws and regulations of the various countries to decide whether or not the loss of the right to the holiday should be stipulated in the case under consideration.

There remains the question of the manner in which the deprivation should be inflicted. In the text submitted it is proposed that the worker may either be deprived of his pay for the holiday during the course of which he undertook other paid employment or else be deprived of his holiday for the following year.

Article 6

In order to facilitate the effective enforcement of the provisions of this Convention, every employer shall be required to keep, in a form approved by the competent authority, a record showing:

(*a*) the date of entry into his service of each person employed by him and the duration of the annual holiday with pay to which each such person is entitled;

(*b*) the dates at which the annual holiday with pay is taken by each person;

(*c*) the remuneration received by each person in respect of the period of his annual holiday with pay.

This article does not call for lengthy comment. Such a provision meets the views expressed in the majority of the replies; it does not impose any great burden on the employer for, in any case, he would probably have to keep a note of these details for his own purposes.

ARTICLE 7

Each Member which ratifies this Convention shall establish a system of sanctions to ensure the application of its provisions.

The great majority of the Governments have expressed themselves in favour of a system of penalties for any infringement of the provisions of the Convention. These penalties are clearly a matter for the national penal codes. In order to obtain the desired results, it is enough, therefore, to provide in the international regulations that all States Members ratifying the Convention shall be under an obligation to set up such a system of penalties. In fact, the great majority of the national regulations contain provisions on this subject.

By providing that all Members ratifying the Draft Convention should take the necessary measures for the enforcement of the provisions of the Convention by means of a system of penalties, Article 7 implies that the application of the Convention should be supervised by an inspection service. Although the great majority of the Governments have replied in the affirmative to the question addressed to them on this point, the Office has not felt called upon to emphasise the question of inspection in its proposals. Most of the Governments, in fact, seem to contemplate entrusting supervision to the existing factory inspection services, without setting up a special service for the purpose. No specific stipulation in the text seems therefore to be necessary.

Commentary on the Draft Recommendation

In the preceding pages reference was made to certain points on which it seemed difficult to incorporate, in international regulations limited to laying down essential principles, any provision entailing strictly defined obligations. The Recommendation supplements the proposed Draft Convention on these points and goes into greater detail as to methods

of application. This purpose is indicated in the preamble, which also sets out the essential purpose of holidays with pay, namely, to enable the worker to have an opportunity for rest, recreation and the development of his faculties.

As has been seen, it has not been possible for the Office to suggest the inclusion in the proposed Draft Convention of a definition of the term "uninterrupted service", as the replies from the Governments revealed that there was a majority opposed to this course, and also owing to the fact that the proposals of the minority, though important in themselves, had not sufficient in common to justify the framing of a rule intended to be applied internationally.

It may, however, be recalled that a number of Governments emphasised the necessity of ensuring that certain circumstances, and in particular absence due to illness, should not be regarded by the national legislations as interrupting the continuity of service qualifying for holidays.

Paragraph 1 of the Recommendation enumerates these various circumstances and points out that they should not affect the continuity of service, subject to the condition, which is suggested by one Government and seems equitable, that the worker should return to work in the same undertaking or with the same employer and that he had not, in the meanwhile, undertaken any other paid work.

This paragraph also proposes, in accordance with a suggestion made in a number of replies, that the condition of continuity of service might be regarded as satisfied if a certain number of days has been worked in the course of a specified period.

Paragraph 2 specifies the conditions in which it would be desirable that the national legislations should exercise the power, given to them under the proposed Draft Convention, to permit in exceptional cases the division or carrying-over of holidays. In accordance with the suggestions made by certain Governments, the text proposes that the holiday should be continuous when its duration corresponds to the prescribed minimum and that, in other cases, the division should ordinarily be limited to two periods, one of which should not be less than this minimum. As to carrying-over, it should be allowed only in respect of a part of the holiday, if the duration of the holiday is in excess of the minimum, nor should it extend over a period of more than three years.

Paragraph 3 deals with the application of the principle that the duration of the holiday should increase as the length of the period of service increases, in regard to which the proposed Draft Convention leaves the national legislations

free to make their own rules. There is one point, which has been previously mentioned and with regard to which it would certainly be desirable that the latitude thus allowed to each country should be limited to a certain extent — i.e. the minimum below which the duration of the holiday should not fall after a certain period of service. If no figure were suggested in this respect, a progressive increase in the duration of the holiday might be provided for by national legislation in such an inadequate way as to circumvent completely the rule prescribed in the international regulations. In this part of the text, therefore, the Recommendation indicates a minimum of twelve working days after seven years of service, equivalent to an increase of one day of holiday for each year of continuous service in addition to the first.

Paragraph 4 suggests that the most equitable method of calculating the normal pay, in the case of workers paid in whole or in part on an output or piece-work basis, is on the basis of the average earnings of the person concerned during a specified period preceding the holiday. This provision meets, as has been pointed out in Chapter II, a desire expressed by a certain number of Governments. In the absence of sufficient agreement among the replies, it has not been possible to propose a figure for the length of the period over which the average should be reckoned, but the Recommendation suggests that the period should be long enough to make the fullest allowance for fluctuations in earnings.

Paragraph 5, finally, emphasises the desirability of the States Members giving consideration to the possibility of instituting a more favourable system in the case of apprentices and young persons below 18 years of age. This provision reflects the anxiety expressed in this connection by some of the Governments in their replies. It is justified by the desirability of facilitating the physical development of young persons during the period of adolescence by ensuring to them a longer period of rest.

* * *

Subject to the preceding observations, the Office submits to the Conference for its consideration the proposed Draft Convention and Draft Recommendation the texts of which are given in the following pages.

PROPOSED DRAFT CONVENTION CONCERNING ANNUAL HOLIDAYS WITH PAY

Article 1

1. This Convention applies to all persons employed in any of the following undertakings and establishments, whether public or private:

(*a*) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;

(*b*) undertakings engaged wholly or mainly in the construction, reconstruction, maintenance, repair, alteration or demolition of any one or more of the following:

buildings,
railways,
tramways,
airports,
harbours,
docks,
piers,
works of protection against floods or coast erosion,
canals,
works for the purpose of inland, maritime or aerial navigation,
roads,
tunnels,
bridges,
viaducts,
sewers,
drains,
wells,
irrigation or drainage works,
telecommunication installations,
works for the production or distribution of electricity or gas,
pipe-lines,
waterworks,

AVANT-PROJET DE CONVENTION CONCERNANT LES CONGÉS ANNUELS PAYÉS

ARTICLE 1

1. La présente convention s'applique au personnel occupé dans les entreprises et établissements suivants, qu'ils soient publics ou privés :

a) établissements dans lesquels des produits sont manufacturés, modifiés, nettoyés, réparés, décorés, achevés, préparés pour la vente, détruits ou démolis, ou dans lesquels les matières subissent une transformation, y compris les entreprises de construction des navires ainsi que les entreprises de production, de transformation et de transmission de l'électricité et de la force motrice en général ;

b) entreprises s'adonnant exclusivement ou principalement à des travaux de construction, reconstruction, entretien, réparation, modification ou démolition des ouvrages suivants :

bâtiments et édifices,
chemins de fer,
tramways,
aéroports,
ports,
docks,
jetées,
ouvrages de protection contre l'action des cours d'eau et de la mer,
canaux,
installations pour la navigation intérieure, maritime ou aérienne,
routes,
tunnels,
ponts,
viaducs,
égouts collecteurs,
égouts ordinaires,
puits,
installations pour l'irrigation et le drainage,
installations de télécommunication,
installations afférentes à la production ou à la distribution de force électrique et de gaz,
pipe-lines,
installations de distribution d'eau,

and undertakings engaged in other similar work or in the preparation for or laying the foundation of any such work or structure;

(*c*) undertakings engaged in the transport of passengers or goods by road, rail, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;

(*d*) mines, quarries and other works for the extraction of minerals from the earth;

(*e*) commercial or trading establishments, including postal and telecommunication services;

(*f*) establishments and administrative services in which the persons employed are mainly engaged in office work;

(*g*) establishments for the treatment and care of the sick, infirm, destitute or mentally unfit;

(*h*) hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses;

(*i*) theatres and places of public amusement;

(*j*) mixed commercial and industrial establishments not falling wholly within any of the foregoing categories.

2. The competent authority in each country shall define the line which separates the undertakings and establishments specified in the preceding paragraph from those outside the scope of this Convention.

3. The competent authority in each country may exempt from the application of this Convention:

(*a*) persons employed in undertakings or establishments in which only members of the employer's family are employed;

(*b*) persons employed in public services whose conditions of service entitle them to an annual holiday with pay at least equal in duration to that prescribed by this Convention.

ARTICLE 2

1. Every person to whom this Convention applies shall be entitled after one year of continuous service to an annual holiday with pay of a duration of at least six working days.

ainsi que les entreprises s'adonnant aux autres travaux similaires et aux travaux de préparation ou de fondation précédant les travaux ci-dessus ;

c) entreprises de transport de personnes ou de marchandises par route ou voie ferrée, par voie d'eau intérieure ou par air, y compris la manutention des marchandises dans les docks, quais, wharfs, entrepôts ou aéroports ;

d) mines, carrières et industries extractives de toute nature ;

e) établissements commerciaux y compris les postes et les services de télécommunication ;

f) établissements et administrations dont le fonctionnement repose essentiellement sur un travail de bureau ;

g) établissements ayant pour objet le traitement ou l'hospitalisation des malades, des infirmes, des indigents et des aliénés ;

h) hôtels, restaurants, pensions, cercles, cafés et autres établissements où sont servies des consommations ;

i) entreprises de spectacles et de divertissements ;

j) établissements revêtant un caractère à la fois commercial et industriel ne correspondant pas complètement à l'une des catégories précédentes.

2. Dans chaque pays, l'autorité compétente devra déterminer la ligne de démarcation entre les entreprises et établissements susmentionnés et ceux qui ne sont pas visés par la présente convention.

3. Dans chaque pays, l'autorité compétente pourra exempter de l'application de la présente convention :

a) les personnes occupées dans les entreprises ou établissements où sont seuls occupés les membres de la famille de l'employeur ;

b) les personnes occupées dans des administrations publiques dont les conditions d'emploi leur donnent droit à un congé annuel payé d'une durée au moins égale à celle du congé prévu par la présente convention.

ARTICLE 2

1. Toute personne à laquelle s'applique la présente convention a droit, après un an de service continu, à un congé annuel payé comprenant au moins six jours ouvrables.

2. National laws or regulations may authorise in special circumstances the division of the annual holiday into parts or the carrying-over of the annual holiday to a subsequent year.

3. The duration of the annual holiday with pay shall increase with the length of service under conditions to be determined by national laws or regulations.

ARTICLE 3

Every person taking a holiday in virtue of Article 2 of this Convention shall receive in respect of the full period of the holiday his usual remuneration calculated in a manner which shall be prescribed by national laws or regulations.

ARTICLE 4

Any agreement to relinquish the right to an annual holiday with pay, or to forgo such a holiday, shall be void.

ARTICLE 5

National laws or regulations may provide that a person to whom this Convention applies who engages in paid employment in his own trade or calling during the course of his annual holiday may be deprived either of his right to payment in respect of the period of the holiday or of his right to an annual holiday with pay in the next subsequent year.

ARTICLE 6

In order to facilitate the effective enforcement of the provisions of this Convention, every employer shall be required to keep, in a form approved by the competent authority, a record showing:

(*a*) the date of entry into his service of each person employed by him and the duration of the annual holiday with pay to which each such person is entitled;

(*b*) the dates at which the annual holiday with pay is taken by each person;

(*c*) the remuneration received by each person in respect of the period of his annual holiday with pay.

ARTICLE 7

Each Member which ratifies this Convention shall establish a system of sanctions to ensure the application of its provisions.

2. Dans chaque pays, la législation nationale a la faculté d'autoriser, à titre exceptionnel, le fractionnement du congé annuel ou son report à une année subséquente.

3. La durée du congé annuel payé doit s'accroître progressivement avec la durée du service selon des modalités à fixer par la législation nationale.

ARTICLE 3

Toute personne prenant un congé en vertu de l'article 2 de la présente convention doit recevoir pour toute la durée dudit congé sa rémunération habituelle calculée suivant des conditions qui doivent être fixées par la législation nationale.

ARTICLE 4

Tout accord comportant l'abandon du droit au congé annuel payé ou la renonciation audit congé doit être considéré comme nul.

ARTICLE 5

La législation nationale peut prévoir que toute personne à laquelle s'applique la présente convention qui entreprend un travail rétribué de sa profession ou occupation pendant la durée de son congé payé, pourra être privée soit de sa rémunération pendant la durée dudit congé, soit de son droit à un congé payé l'année suivante.

ARTICLE 6

En vue de faciliter l'application effective de la présente convention, chaque employeur doit inscrire sur un registre, selon le mode approuvé par l'autorité compétente :

a) la date d'entrée en service des personnes employées par lui et la durée du congé annuel payé auquel chacune d'elles a droit ;

b) les dates auxquelles le congé annuel payé de chaque personne est pris ;

c) la rémunération reçue par chaque personne pour la durée de son congé annuel payé.

ARTICLE 7

Tout Membre qui ratifie la présente convention doit instituer un système de sanctions pour en assurer l'application.

DRAFT RECOMMENDATION CONCERNING ANNUAL HOLIDAYS WITH PAY

The Conference,

Having adopted a Draft Convention concerning annual holidays with pay for employed persons,

Considering that the purpose of such holidays is to secure to employed persons opportunities for rest, recreation and the development of their faculties,

Considering that the conditions laid down by the Draft Convention constitute the minimum standard to which any system of holidays with pay should conform,

Considering that it is desirable to deal in greater detail with the methods of applying the system,

Recommends that each Member should take the following suggestions into consideration:

1. (i) The continuity of service required in order to become entitled to a holiday should not be affected by interruptions occasioned by sickness or accident, family events, military service, the exercise of civic rights, changes in the management of the undertaking in which the employed person is employed, or intermittent involuntary unemployment if the duration of the unemployment does not exceed a prescribed limit and if the person concerned resumes employment in the same undertaking or with the same employer and has not in the meantime been engaged in other paid employment.

(ii) In employments in which work is not carried on regularly throughout the year the condition of continuity of employment should be regarded as satisfied by the working of a prescribed number of days during a prescribed period.

2. Although it is desirable that provision should be made in special cases for holidays to be divided or to be carried over from one year to a subsequent year, care should be exercised to ensure that such special arrangements do not run counter to the purpose of the holiday, which is to enable the employed person to make good the loss of physical and mental forces during the course of the year. To achieve this end, it is desirable that the holiday should be continuous when its duration is no more than the minimum prescribed by the Draft Convention. In other cases division of the holiday should be restricted, save in quite exceptional circumstances, to division into not more than two parts, one of which should

PROJET DE RECOMMANDATION CONCERNANT LES CONGÉS ANNUELS PAYÉS

La Conférence,

Ayant adopté un projet de convention assurant aux travailleurs un congé annuel payé ;

Considérant que le but du congé est de donner aux travailleurs une possibilité de repos, de récréation et de développement de ses facultés ;

Considérant que le projet de convention adopté établit les conditions minima auxquelles devrait répondre tout régime de congés payés ;

Considérant qu'il y a intérêt à entrer plus dans le détail des modalités d'application,

Recommande à chaque Membre de prendre en considération les suggestions suivantes :

1. i) La continuité du service requis pour avoir droit au congé ne devrait pas être affectée par suite des interruptions ayant pour cause une maladie ou un accident, des événements de famille, le service militaire, l'exercice des droits civiques, le changement dans la direction de l'entreprise où le travailleur est occupé ou le chômage involontaire intermittent, ne dépassant pas une certaine limite à déterminer, si le travailleur reprend son service dans la même entreprise ou chez le même employeur et n'a pas occupé dans l'intervalle un autre emploi rémunéré.

ii) Dans les emplois où le travail ne se poursuit pas d'une façon régulière toute l'année, la condition de continuité du service devrait être considérée comme remplie lorsque l'intéressé a effectué un certain nombre de jours de travail au cours d'une période déterminée.

2. Bien qu'il soit désirable dans des cas exceptionnels de prévoir la possibilité de fractionnement ou de cumul des congés, il faudrait cependant éviter que cette tolérance agisse à l'encontre du but du congé qui est de permettre à l'organisme de récupérer les forces physiques et morales perdues au cours de l'année. A cet effet, il est souhaitable que le congé soit continu lorsque sa durée correspond seulement à la durée minimum prévue par le projet de convention. Dans les autres cas, le fractionnement devrait être limité, sauf dans des circonstances tout à fait exceptionnelles, à deux périodes au plus, dont l'une ne pourrait être inférieure à la durée minimum prévue. Dans le même ordre d'idées, le cumul des congés ne

not be less than the prescribed minimum. Similarly, the carrying-over of holidays should be authorised only in respect of so much of the holiday as exceeds the prescribed minimum and should be limited to not more than three years.

3. It is desirable that the increase in the length of the holiday with the duration of service should begin to operate as soon as possible and should be effected by regular stages so that a prescribed minimum will be attained after a prescribed number of years, for example, twelve working days after seven years of service.

4. The fairest method of calculating the remuneration of a person paid in whole or part on an output or piece-work basis is to calculate the average earnings over a fairly long period so as to nullify as far as possible the effect of fluctuations in earnings.

5. It is desirable that the States Members should consider whether a more advantageous system should not be established for young persons and apprentices under 18 years of age in order to ease the transition from school to industrial life during a period of physical development.

devrait être autorisé que pour la partie du congé qui excéderait la durée minimum, ni s'étendre sur une période de plus de trois ans.

3. Il serait souhaitable que l'accroissement progressif du congé suivant l'ancienneté de service commence le plus tôt possible et ait lieu par échelons réguliers de manière à atteindre un minimum déterminé après un certain nombre d'années, par exemple, douze jours ouvrables après sept ans de service.

4. Pour le calcul de la rétribution du travailleur rémunéré en totalité ou en partie d'après le rendement ou à la tâche, la méthode la plus équitable consisterait à calculer le gain moyen au cours d'une période assez longue, afin de compenser le plus possible les variations de rémunération.

5. Il serait désirable que les Etats Membres examinent s'il n'y aurait pas lieu de prévoir un régime plus favorable pour les jeunes gens et apprentis de moins de dix-huit ans, afin de faciliter au cours de la période de développement physique la transition entre la vie scolaire et la vie industrielle.